

Chapter:	32	Companies (Winding Up and Miscellaneous Provisions) Ordinance	Gazette Number	Version Date
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		Long title	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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To make provision for the winding up of companies; for receivers and managers; for offering of shares and debentures; for prospectuses; for disqualification of directors; for prevention of evasion of the Societies Ordinance; and for incidental and connected matters.

(Replaced 28 of 2012 ss. 912 & 920)

[1 July 1933]

(Originally 39 of 1932 (Cap 32, 1950))

(*Format changes—E.R. 1 of 2014)

Note:

* **The title of the Ordinance has been updated to the current legislative styles.**

Section:	1	Short title	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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This Ordinance may be cited as the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

(Amended 28 of 2012 ss. 912 & 920)

(*Format changes—E.R. 1 of 2014)

Note:

* **The format of this section has been updated to the current legislative styles.**

Section:	2	Interpretation	E.R. 1 of 2014	04/03/2014
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Interpretation and Specification of Forms

(Amended 3 of 1997 s. 2)

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

a resolution for voluntary winding up (自動清盤決議) has the meaning assigned to it by section 228(2); (Added 6 of 1984 s. 2)

agent (代理人) does not include a person's counsel acting as such; (Added 6 of 1984 s. 2)

amend (修訂) includes delete, add to or vary and the doing of all or any of such things simultaneously; (Added 30 of 2004 s. 2)

articles (章程細則), in relation to a company, means the articles of association of the company;

Note-

Please also see section 98 of the Companies Ordinance (Cap 622). A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles. (Replaced 28 of 2012 ss. 912 & 920)

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); (Added 12 of 1998 s. 2. Amended 49 of 1995 s. 53)

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; (Added 28 of 2003 s. 2)

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

(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; (Replaced 5 of 2002 s. 407)

Companies Register (公司登記冊) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

company (公司) means-

(a) a company formed and registered under the Companies Ordinance (Cap 622); or

(b) an existing company; (Replaced 28 of 2012 ss. 912 & 920)

company limited by guarantee (擔保有限公司) has the meaning given by section 9 of the Companies Ordinance (Cap 622) for the purposes of that Ordinance; (Added 28 of 2012 ss. 912 & 920)

company limited by shares (股份有限公司) has the meaning given by section 8 of the Companies Ordinance (Cap 622) for the purposes of that Ordinance; (Added 28 of 2012 ss. 912 & 920)

company secretary (公司秘書) includes any person occupying the position of company secretary (by whatever name called); (Added 28 of 2012 ss. 912 & 920)

contributory (分擔人) has the meaning assigned to it by section 171; (Added 6 of 1984 s. 2)

court (法院、法庭) means the Court of First Instance; (Replaced 6 of 1984 s. 2. Amended 25 of 1998 s. 2)

creditors' voluntary winding up (債權人自動清盤) has the meaning assigned to it by section 233(4); (Added 6 of 1984 s. 2)

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; (Replaced 28 of 2012 ss. 912 & 920)

default fine (失責罰款) has the meaning assigned to it by section 351(1A)(d); (Added 6 of 1984 s. 2. Amended 75 of 1993 s. 2)

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;

existing company (原有公司) means a company formed and registered under a former Companies Ordinance; (Replaced 28 of 2012 ss. 912 & 920)

financial statements (財務報表) means-

(a) the annual financial statements; or

(b) the annual consolidated financial statements, as defined by section 357(1) of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

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 pre-amended Ordinance; (Added 28 of 2012 ss. 912 & 920)

founder member (創辦成員) has the meaning given by section 2(1) of the Companies Ordinance (Cap 622); (Replaced 28 of 2012 ss. 912 & 920)

general rules (一般規則) means general rules made under section 296 and includes forms;

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; (Added 6 of 1984 s. 2)

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; (Added 28 of 2003 s. 2)

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; (Added 28 of 2003 s. 2)

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; (Added 78 of 1972 s. 2)

limited company (有限公司) means a company limited by guarantee or a company limited by shares; (Added 28 of

2012 ss. 912 & 920)

liquidator (清盤人) includes a provisional liquidator holding such office by virtue of section 194; (Added 46 of 2000 s. 2)

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-

- (a) a receiver or manager of the property of the company; or
- (b) a special manager of the estate or business of the company appointed under section 216; (Added 28 of 2003 s. 2)

member (成員), in relation to a company, means-

- (a) a founder member of the company; or
- (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; (Added 28 of 2012 ss. 912 & 920)

members' voluntary winding up (成員自動清盤) has the meaning assigned to it by section 233(4); (Added 6 of 1984 s. 2)

non-Hong Kong company (非香港公司) means a company incorporated outside Hong Kong that-

- (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16 of the Companies Ordinance (Cap 622); or
- (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; (Replaced 28 of 2012 ss. 912 & 920)

officer (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate; (Added 80 of 1974 s. 2. Amended 28 of 2012 ss. 912 & 920)

officer who is in default (失責高級人員) has the meaning assigned to it by section 351(2); (Added 6 of 1984 s. 2)

Official Receiver (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap 6); (Added 30 of 1999 s. 2)

ordinary resolution (普通決議) has the meaning given by section 563 of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

place of business (營業地點), in relation to a non-Hong Kong company, has the meaning given by section 774(1) of the Companies Ordinance (Cap 622); (Added 30 of 2004 s. 2. Amended 28 of 2012 ss. 912 & 920)

pre-amended Ordinance (《修訂前的本條例》) means the Companies Ordinance (Cap 32) as in force from time to time before the commencement date* of section 2 of Schedule 9 to the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

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; (Amended 23 of 1999 s. 3)

printed (印刷、印製) means produced by ordinary letterpress or lithography; (Added 4 of 1963 s. 2. Amended 28 of 2012 ss. 912 & 920)

private company (私人公司) has the meaning given by section 11 of the Companies Ordinance (Cap 622) for the purposes of that Ordinance; (Added 6 of 1984 s. 2. Amended 28 of 2012 ss. 912 & 920)

prospectus (招股章程)-

- (a) subject to paragraph (b), means any prospectus, notice, circular, brochure, advertisement, or other document-
 - (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
 - (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);
- (b) does not include any prospectus, notice, circular, brochure, advertisement, or other document-
 - (i) to the extent that it is a publication falling within section 38B(2); or
 - (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; (Replaced 30 of 2004 s. 2)

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; (Added 5 of 2002 s. 407)

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); (Added 5 of 2002 s. 407)

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); (Added 5 of 2002 s. 407)

record (紀錄) includes not only a written record but any record conveying information or instructions by any other means whatsoever; (Added 28 of 2003 s. 2)

registered non-Hong Kong company (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; (Added 28 of 2012 ss. 912 & 920)

Registrar (處長) means the Registrar of Companies appointed under section 21(1) of the Companies Ordinance (Cap 622); (Replaced 6 of 1984 s. 2. Amended 28 of 2012 ss. 912 & 920)

shadow director (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; (Replaced 28 of 2012 ss. 912 & 920)

share (股份)-

(a) means a share in a company's share capital; and

(b) if any of the company's shares is converted into stock, includes stock; (Replaced 28 of 2012 ss. 912 & 920)

special resolution (特別決議) has the meaning given by section 564 of the Companies Ordinance (Cap 622); (Added 28 of 2012 ss. 912 & 920)

specified corporation (指明法團) means a company or a non-Hong Kong company; (Added 30 of 2004 s. 2)

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; (Added 3 of 1997 s. 3)

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); (Added 8 of 2011 s. 17)

the minimum subscription (最低認購額) has the meaning assigned to it by section 42(2); (Added 6 of 1984 s. 2)

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); (Added 6 of 1984 s. 2)

unlimited company (無限公司) has the meaning given by section 10 of the Companies Ordinance (Cap 622) for the purposes of that Ordinance. (Replaced 28 of 2012 ss. 912 & 920)

(Amended 1 of 1949 s. 22; 10 of 1987 s. 2; 86 of 1992 s. 2; 5 of 2002 s. 407; 30 of 2004 s. 2; 28 of 2012 ss. 912 & 920)

(2) (Repealed 28 of 2012 ss. 912 & 920)

(3) References in this Ordinance to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Hong Kong. (Added 80 of 1974 s. 2)

(4) For the purposes of this Ordinance, a company shall, subject to the provisions of subsection (6), be deemed to be a subsidiary of another company, if-

(a) that other company-

(i) controls the composition of the board of directors of the first-mentioned company; or (Amended 6 of 1984 s. 2)

(ii) controls more than half of the voting rights of the first-mentioned company; or (Amended 28 of 2012 ss. 912 & 920)

(iii) holds more than half of the issued share capital of the first-mentioned company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary. (Added 80 of 1974 s. 2)

(5) For the purposes of subsection (4), the composition of a company's board of directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it, without the consent of any other person, can appoint or remove all or a majority of the directors, and, for the purposes of this provision, that other company shall be deemed to have power to make such an appointment if- (Amended

- 12 of 2005 s. 2)
- (a) a person cannot be appointed as a director without the exercise in his favour by that other company of such a power; or
 - (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other company. (Added 80 of 1974 s. 2)
- (6) In determining whether one company is a subsidiary of another company-
- (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), any shares held or power exercisable-
 - (i) by any person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,
 shall be treated as held or exercisable by that other company;
 - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business. (Added 80 of 1974 s. 2)
- (7) A reference in this Ordinance to the holding company of a company shall be read as a reference to a company of which that last-mentioned company is a subsidiary. (Added 80 of 1974 s. 2)
- (8) In subsections (4), (5), (6) and (7) the expression **company** (公司) includes any body corporate or corporation. (Added 4 of 1976 s. 2)
- (8A) (Repealed 28 of 2012 ss. 912 & 920)
- (9) For the avoidance of doubt it is declared that a reference, in relation to any purpose of this Ordinance, to any form, matter, particular or information specified by the Registrar means, except where it is provided otherwise, specified by him for the time being for that purpose. (Added 3 of 1997 s. 3)
- (10) Any provision of this Ordinance that refers (in whatever words) to-
- (a) the founder members; (Amended 30 of 2004 s. 2)
 - (b) the members or shareholders of a company;
 - (c) a majority of members or shareholders of a company; or
 - (d) a specified number or percentage of members or shareholders of a company,
- shall, unless the context otherwise requires, apply with necessary modifications in relation to a company that has only one founder member or that has only one person as a member or shareholder, as the case may be. (Added 28 of 2003 s. 2. Amended 30 of 2004 s. 2)
- (11) Any provision of this Ordinance that refers (in whatever words) to-
- (a) the directors of a company;
 - (b) the board of directors of a company;
 - (c) a majority of the directors of a company; or
 - (d) a specified number or percentage of the directors of a company,
- shall, unless the context otherwise requires, apply with necessary modifications in relation to a private company that has only one director. (Added 28 of 2003 s. 2)
- (12) The reference to a non-Hong Kong company in the definition of **specified corporation** in subsection (1) shall, before the commencement of section 1(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004), be deemed to be a reference to an oversea company as is for the time being defined under this Ordinance. (Added 30 of 2004 s. 2 and L.N. 81 of 2005)

(Amended E.R. 1 of 2014)
[cf. 1929 c. 23 s. 380 U.K.]
(**Format changes—E.R. 1 of 2014)

Note:

* Commencement date: 3 March 2014.

** The format of this section has been updated to the current legislative styles.

Section:	2A	Registrar to specify forms	E.R. 1 of 2014	03/03/2014
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- (1) The Registrar may specify a form, for use in relation to any purpose of this Ordinance—
 - (a) unless it is provided otherwise in this Ordinance; or
 - (b) except where a form for that purpose may be or is prescribed, and any such form may contain any particulars ancillary or incidental to that purpose.
- (2) In exercising, as regards any purpose of this Ordinance, the power conferred on him by subsection (1), the Registrar may, if he thinks fit, specify 2 or more different forms to be used in respect of that purpose, in different circumstances.
- (3) (Repealed 28 of 2003 s. 3)

(Added 3 of 1997 s. 4)

(*Format changes—E.R. 1 of 2014)

Note:

* The format of this section has been updated to the current legislative styles.

Section:	2B	Construction of references to parent company, etc.	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) A reference in this Ordinance to parent company, parent undertaking or subsidiary undertaking shall be construed in accordance with the Twenty-third Schedule.
- (2) A reference in a provision specified under subsection (3) for the purposes of this subsection—
 - (a) to a holding company shall be deemed to include a parent company;
 - (b) to a subsidiary or subsidiary company shall be deemed to include a subsidiary undertaking; and
 - (c) to shares or an undertaking shall be construed in accordance with the Twenty-third Schedule.
- (3) The provisions specified for the purposes of subsection (2) are the Third Schedule and the Fourth Schedule. (Amended 28 of 2012 ss. 912 & 920)
- (4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend subsection (3).

(Added 12 of 2005 s. 3)

(*Format changes—E.R. 1 of 2014)

Note:

* The format of this section has been updated to the current legislative styles.

Section:	3	(Repealed 6 of 1984 s. 3)		30/06/1997
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Part:	I	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	4	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	5	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	5A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	5B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	5C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	6	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	7	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	8	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	9	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	10	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	11	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	12	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	13	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	14	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	14A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	15	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	16	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	17	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	18	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	18A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014

Section:	19	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	20	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	20A	(Repealed 60 of 1990 s. 4)		30/06/1997
Section:	21	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	22	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	22A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	22AA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	22B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	22C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	23	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	24	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	25	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	25A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	26	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	27	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	28	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	28A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014

Section:	29	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	30	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	31	(Repealed 28 of 2003 s. 12)	L.N. 267 of 2003	13/02/2004
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Subheading repealed 28 of 2003 s. 11

Section:	32	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	32A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	33	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	34	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	35	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	36	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Part:	II	Share Capital and Debentures	E.R. 2 of 2012	02/08/2012
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(*Format changes—E.R. 2 of 2012)

Note:

* The format of Part II has been updated to the current legislative styles.

Section:	37	Dating of prospectus	E.R. 2 of 2012	02/08/2012
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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)
[cf. 1929 c. 23 s. 34 U.K.]

Section:	38	Specific requirements as to particulars in prospectus	L.N. 163 of 2013	03/03/2014
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- (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)

[cf. 1929 c. 23 s. 35 U.K.]

Section:	38A	Exemption of certain persons and prospectuses from compliance with certain requirements	E.R. 2 of 2012	02/08/2012
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- (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 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)

Section:	38AA	Exemption for structured products	E.R. 2 of 2012	02/08/2012
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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)

Section:	38B	Advertisements concerning prospectuses	E.R. 2 of 2012	02/08/2012
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- (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 as may have been specified by the Commission under subsection (2A)(a); (Replaced 86 of 1992 s. 4. Amended 30 of 2004 s. 2)
 - (b) 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;
 - (c) the publication of an advertisement, invitation or document which has been authorized by the Commission under section 105 of the Securities and Futures Ordinance (Cap 571); (Added 86 of 1992 s. 4. Amended 5 of 2002 s. 407; 30 of 2004 s. 2)
 - (d) the publication of an extract from or abridged version of a prospectus which is in accordance with such requirements as may have been authorized by the Commission under subsection (2A)(b) in that particular case; (Added 86 of 1992 s. 4. Amended 30 of 2004 s. 2)
 - (e) the publication of an advertisement which-
 - (i) complies with the requirements of the Nineteenth Schedule applicable to the advertisement; and
 - (ii) contains such information as is permitted under subsection (2AA); or (Added 30 of 2004 s. 2)
 - (f) the publication of an advertisement-
 - (i) in relation to a company which is a collective investment scheme authorized under section 104(1) of the Securities and Futures Ordinance (Cap 571); and
 - (ii) which has been authorized under section 105 of the Securities and Futures Ordinance (Cap 571), (Added 30 of 2004 s. 2)
- shall not contravene this section.
- (2AA) For the purposes of subsection (2)(e)(ii), the Commission may, on the request of the applicant, and in accordance with the guidelines published under section 38BA, permit an advertisement to contain such information as is specified in the permission and subject to such conditions as are specified in the permission. (Added 30 of 2004 s. 2)
- (2A) The Commission may-
- (a) by notice in the Gazette, specify requirements applicable to the form and manner of, and any other matters relating to, publication of an extract from or abridged version of a prospectus, or any class of prospectuses;

- (b) in any particular case, specify requirements applicable to and authorize the form and manner of, and any other matters relating to, publication of any extract from or abridged version of a prospectus. (Added 86 of 1992 s. 4. Amended 30 of 2004 s. 2)
- (2B) A prospectus referred to in subsection (2A) means a prospectus relating to shares in or debentures of a company, whether incorporated in or outside Hong Kong. (Added 86 of 1992 s. 4)
- (3) If any person acts in contravention of subsection (1), he shall be liable to a fine. (Amended 7 of 1990 s. 2)
(Added 78 of 1972 s. 6)

Section:	38BA	Commission may publish guidelines relating to publications falling within section 38B(2)	E.R. 2 of 2012	02/08/2012
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- (1) The Commission may prepare and publish guidelines in relation to the form and manner of, and any other matters relating to, publications falling within section 38B(2).
- (2) Guidelines published under subsection (1) are not subsidiary legislation.
(Added 30 of 2004 s. 2)

Section:	38C	Expert's consent to issue of prospectus containing statement by him	E.R. 2 of 2012	02/08/2012
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- (1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless-
- (a) he has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included; and
- (b) a statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.
- (2) If any prospectus is issued in contravention of this section the company and every person who is knowingly a party to the issue thereof shall be liable to a fine. (Amended 7 of 1990 s. 2)
- (3) In this section the expression *expert* (專家) includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.
(Added 78 of 1972 s. 6)
[cf. 1948 c. 38 s. 40 U.K.]

Section:	38D	Registration of prospectus	L.N. 163 of 2013	03/03/2014
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- (1) No prospectus shall be issued by or on behalf of a company unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, its registration has been authorized under this section and a copy thereof has been registered by the Registrar.
- (2) Every prospectus shall-
- (a) on the face of it, state that a copy has been registered as required by this section and immediately after such statement-
- (i) state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus;
- (ii) where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; or
- (iii) where the prospectus is or is to be authorized for issue by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, state that neither the Commission nor the recognized exchange controller nor the Registrar takes any responsibility as to the contents of the prospectus; (Replaced 5 of 2002 s. 407)
- (b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and
- (c) conform with such requirements as are prescribed by the Chief Executive in Council and the requirements set out in subsection (7A). (Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920)
- (3) An application for authorization for registration of a prospectus under this section shall be made in writing to the

Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing and having endorsed thereon or attached thereto-

- (a) any consent to the issue of the prospectus required by section 38C from any person as an expert; and
- (b) in the case of a prospectus issued generally, also-
 - (i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 38A from compliance with the requirements of section 38(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 38A(1), a copy or, as the case may be, a memorandum of that contract;
 - (ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and
 - (iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (10) to be a correct translation. (Amended 83 of 1995 s. 7; 30 of 2004 s. 2)
- (5) The Commission may-
 - (a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate-
 - (i) certifying that the Commission has done so; and
 - (ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or
 - (b) refuse to authorize such registration.
- (6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.
- (7) The Registrar-
 - (a) shall not register a prospectus under this section unless-
 - (i) it is dated and the copy thereof to be registered has been signed in the manner required by this section;
 - (ii) it is accompanied by a certificate issued under subsection (5);
 - (iii) it has endorsed thereon or attached thereto all the documents specified in the certificate issued under subsection (5); (Amended 28 of 2012 ss. 912 & 920)
 - (iv) it conforms with such requirements as are prescribed by the Chief Executive in Council and the requirements set out in subsection (7A); and (Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920)
 - (v) it is accompanied by any fee that is payable, in respect of the registration, under a regulation made under section 26 of the Companies Ordinance (Cap 622); and (Added 28 of 2012 ss. 912 & 920)
 - (b) shall register a prospectus if subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph (a) are complied with in respect of that prospectus. (Amended 28 of 2012 ss. 912 & 920)
- (7A) The following are the requirements set out for the purposes of subsections (2)(c) and (7)(a)(iv)-
 - (a) any requirement that the Registrar may specify, by notice in the Gazette, in relation to font size of prospectuses for the purposes of this section;
 - (b) any other requirements that the Registrar may specify for the purpose of-
 - (i) ensuring that documents of the same kind are of a standard form; and
 - (ii) enabling the Registrar to make copies or image records of documents and to make and keep records of the information contained in them. (Added 28 of 2012 ss. 912 & 920)
- (7B) For the purposes of subsection (7A)(b), the Registrar may specify different requirements for different documents or classes of documents. (Added 28 of 2012 ss. 912 & 920)
- (8) If a prospectus is issued without having endorsed thereon or attached thereto the required documents or without a copy thereof which has the required documents endorsed or attached having been registered under this section

by the Registrar, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine and, for continued default, to a daily default fine from the date of the issue of the prospectus until a copy thereof is so registered or until the required documents are endorsed or attached, as the case may be.

- (9) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.
- (10) A translation mentioned in subsection (4) shall be-
- (a) certified by the person making the translation as a correct translation; and
 - (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say-
 - (i) if the translation be made outside Hong Kong-
 - (A) a notary public in the place where the translation is made;
 - (B) such other person as may be specified by the Commission; or
 - (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;
 - (ii) if the translation be made in Hong Kong-
 - (A) a notary public in Hong Kong;
 - (B) a solicitor of the High Court of Hong Kong;
 - (C) such other person as may be specified by the Commission; or
 - (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph. (Added 30 of 2004 s. 2)
- (11) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation. (Added 30 of 2004 s. 2)

(Replaced 86 of 1992 s. 5)

Section:	39	(Repealed 6 of 1984 s. 23)		30/06/1997
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Section:	39A	Amendment of prospectus consisting of one document	E.R. 2 of 2012	02/08/2012
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- (1) A prospectus-
- (a) consisting of one document; and
 - (b) to which the provisions of this Part are applicable,
- may only be amended in accordance with the provisions of Part 1 of the Twentieth Schedule.
- (2) The provisions of Part 1 of the Twentieth Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which may be amended under subsection (1).
- (3) If any company contravenes subsection (1), the company and every officer of the company who is in default shall be liable to a fine.
- (4) For the avoidance of doubt, it is hereby declared that this section and Part 1 of the Twentieth Schedule do not apply to a prospectus to which section 39B applies.

(Added 30 of 2004 s. 2)

Section:	39B	Prospectus may consist of more than one document, etc.	E.R. 2 of 2012	02/08/2012
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- (1) A prospectus to which the provisions of this Part are applicable may consist of more than one document in accordance with the provisions of Part 1 of the Twenty-first Schedule.
- (2) A prospectus to which subsection (1) applies may only be amended in accordance with the provisions of Part 1 of the Twenty-first Schedule.
- (3) The provisions of Part 1 of the Twenty-first Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which falls within subsection (1) or which may be amended under subsection (2).
- (4) If any company contravenes subsection (2), the company and every officer of the company who is in default shall be liable to a fine.

(Added 30 of 2004 s. 2)

Section:	39C	Submission of certified copies	L.N. 163 of 2013	03/03/2014
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Expanded Cross Reference:

37, 38, 38A, 38B, 38BA, 38C, 38D, 39, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B

Where any document (howsoever described), other than a prospectus, is required under any of the provisions of sections 37 to 44B inclusive to be submitted to the Registrar by a company, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified— <* Note- Exp. x-Ref: Sections 37, 38, 38A, 38B, 38BA, 38C, 38D, 39, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B *>

- (a) to be a true copy of the document; and
- (b) by—
 - (i) a director or company secretary of the company or an agent of the director or company secretary authorized in writing for the purpose by the director or company secretary; (Amended 28 of 2012 ss. 912 & 920)
 - (ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap 159) or a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap 50); or (Amended 10 of 2005 s. 223)
 - (iii) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap 159).
(Added 30 of 2004 s. 2)

Section:	40	Civil liability for misstatements in prospectus	E.R. 2 of 2012	02/08/2012
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- (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included therein, that is to say-
 - (a) every person who is a director of the company at the time of the issue of the prospectus;
 - (b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
 - (c) every person being a promoter of the company; and
 - (d) every person who has authorized the issue of the prospectus:

Provided that where under section 38C the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.
- (1A) Subsection (1)(d) shall not apply-
 - (a) to the Commission;
 - (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), to the Commission or the recognized exchange company; or
 - (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller.
(Replaced 5 of 2002 s. 407)
- (2) No person shall be liable under subsection (1) if he proves-
 - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or
 - (d) that-
 - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public

official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 38C to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by the said section 38C, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

- (3) A person who, apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 38C, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves-
 - (a) that, having given his consent under the said section 38C to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
 - (b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or
 - (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.
- (4) Where-
 - (a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof; or
 - (b) the consent of a person is required under section 38C to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof.

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 38C to the inclusion therein of a statement purporting to be made by him as an expert.
- (5) For the purposes of this section-
 - (a) the expression ***promoter*** (發起人) means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and
 - (b) the expression ***expert*** (專家) has the same meaning as in section 38C.
- (6) This section shall apply to a publication falling within section 38B(2) as if the publication were a prospectus. (Added 30 of 2004 s. 2)
- (7) It is hereby declared that, for the purposes of this section, ***persons who subscribe for any shares or debentures*** (任何股份或債權證的認購人) includes persons specified in the Twenty-second Schedule. (Added 30 of 2004 s. 2)

(Replaced 78 of 1972 s. 7)
[cf. 1948 c. 38 s. 43 U.K.]

Section:	40A	Criminal liability for misstatements in prospectus	E.R. 2 of 2012	02/08/2012
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- (1) Where a prospectus issued after the commencement* of the Companies (Amendment) Ordinance 1972 (78 of 1972) includes any untrue statements, any person who authorized the issue of the prospectus shall be liable to imprisonment and a fine, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the statement was true. (Amended 7 of 1990 s. 2)
- (2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 38C to the inclusion therein of a statement purporting to be made by him as an expert.
- (3) Subsection (1) shall not apply-
 - (a) to the Commission;
 - (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), to the Commission or the recognized exchange company; or
 - (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller. (Replaced 5 of 2002 s. 407)
- (4) This section shall apply to a publication falling within section 38B(2) as if the publication were a prospectus. (Added 30 of 2004 s. 2)

(Added 78 of 1972 s. 8)
[cf. 1948 c. 38 s. 44 U.K.]

Note:

* **Commencement date: 1 March 1973.**

Section:	40B	Right to damages and compensation not affected	E.R. 2 of 2012	02/08/2012
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- A person is not debarred from obtaining damages or other compensation from a company by reason only of-
- (a) his holding or having held shares in the company; or
 - (b) his having any right-
 - (i) to apply or subscribe for shares; or
 - (ii) to be included in the register of the company in respect of shares.

(Added 3 of 1997 s. 10)
[cf. 1985 c. 6 s. 111A U.K.]

Section:	41	Document containing offer of shares or debentures for sale to be deemed prospectus	E.R. 2 of 2012	02/08/2012
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- (1) Where a company allots or agrees to allot any shares in or debentures of the company 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 shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Ordinance, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown-
 - (a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or
 - (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

- (3) Section 38D as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 38 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus-
- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
 - (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted, or a copy thereof, may be inspected. (Amended 78 of 1972 s. 9)
- (4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by 2 directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

[cf. 1929 c. 23 s. 38 U.K.]

Section:	41A	Interpretation of provisions relating to prospectuses	E.R. 2 of 2012	02/08/2012
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- (1) For the purposes of the foregoing provisions of this Part- (Amended 30 of 2004 s. 2)
- (a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
 - (b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.
- (2) For the purposes of sections 40 and 40A, **untrue statement** (不真實陳述), in relation to any prospectus, includes a material omission from the prospectus. (Added 30 of 2004 s. 2)

(Added 78 of 1972 s. 10)

[cf. 1948 c. 38 s. 46 U.K.]

Section:	42	Prohibition of allotment unless minimum subscription received	L.N. 163 of 2013	03/03/2014
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Allotment

- (1) Subject to section 38A, no allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 7 in Part I of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid. (Amended 78 of 1972 s. 11; 86 of 1992 s. 8)
- (2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Ordinance referred to as the minimum subscription.
- (3) The amount payable on application on each share shall not be less than 5 per cent of the issue price of the share. (Amended 28 of 2012 ss. 912 & 920)
- (4) Subject to section 38A, if the conditions aforesaid have not been complied with on the expiration of 30 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 38 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 8 per cent per annum from the expiration of the 38th day: (Amended 86 of 1992 s. 8)
 Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part. (Replaced 78 of 1972 s. 11)
- (5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.
- (6) This section, except subsection (3), shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

[cf. 1929 c. 23 s. 39 U.K.]

Section:	43	Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar	E.R. 2 of 2012	02/08/2012
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- (1) A company having a share capital which does not issue a prospectus on its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.
- (2) Every statement in lieu of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the said Fourth Schedule, have endorsed thereon or attached thereto a written statement signed by those person setting out the adjustments and giving the reasons therefor.
- (3) This section shall not apply to a private company or any allotment of shares or debentures the subject of an offer specified in Part 1 of the Seventeenth Schedule as read with the other Parts of that Schedule. (Amended 30 of 2004 s. 2)
- (4) If a company acts in contravention of subsection (1) or (2), the company and every director of the company who knowingly and wilfully authorizes or permits the contravention shall be liable to a fine. (Amended 7 of 1990 s. 2)
- (5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes any untrue statement, any person who authorized the delivery of the statement in lieu of prospectus for registration shall be liable to imprisonment and a fine, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true. (Amended 7 of 1990 s. 2)
- (6) For the purposes of this section-
 - (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
 - (b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein.
- (6A) For the purposes of subsection (5), **untrue statement** (不真實陳述), in relation to a statement in lieu of prospectus, includes a material omission from the statement. (Added 30 of 2004 s. 2)
- (7) The Chief Executive in Council may by regulation amend the Fourth Schedule. (Amended 23 of 1999 s. 3)
(Replaced 78 of 1972 s. 12)
[cf. 1948 c. 38 s. 48 U.K.]

Section:	44	Effect of irregular allotment	E.R. 2 of 2012	02/08/2012
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- (1) An allotment made by a company to an applicant in contravention of the provisions of sections 42 and 43, shall be voidable at the instance of the applicant within 1 month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within 1 month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.
- (2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:
Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of 2 years from the date of the allotment.

[cf. 1929 c. 23 s. 41 U.K.]

Section:	44A	Applications for, and allotment of, shares and debentures	E.R. 2 of 2012	02/08/2012
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- (1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the 3rd day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.
The beginning of the said 3rd day or such later time as aforesaid is hereafter in this Ordinance referred to as *the time of the opening of the subscription lists*.
- (2) Subject to section 38A, no allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally later than 30 days after the day on which the prospectus is first so issued. (Amended 86 of 1992 s. 9)
- (3) In subsections (1) and (2), the references to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:
Provided that, if it is not so issued as a newspaper advertisement before the 3rd day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.
- (4) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine. (Amended 7 of 1990 s. 2)
- (5) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the contravention.
- (6) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the 5th day after the time of the opening of the subscription lists, or the giving before the expiration of the said 5th day, by some person responsible under section 40 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.
- (7) In reckoning for the purposes of this section and section 44B the 3rd or 5th day after another day, any intervening day which is a Saturday or Sunday or which is a general holiday in Hong Kong shall be disregarded, and if the 3rd or 5th day (as so reckoned) is itself a Saturday or Sunday or such a holiday there shall for the said purposes be substituted the 1st day thereafter which is none of them. (Amended 6 of 1984 s. 259)
(Added 78 of 1972 s. 13)
[cf. 1948 c. 38 s. 50 U.K.]

Section:	44B	Allotment of shares and debentures to be listed on stock exchange	E.R. 2 of 2012	02/08/2012
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- (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be listed on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the 3rd day after the first issue of the prospectus or if the permission has been refused before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period not exceeding 6 weeks as may, within the said 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange. (Amended 6 of 1984 s. 259)
- (2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 8 per cent per annum from the expiration of the 8th day:
Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (3) All money received as aforesaid shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2); and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine. (Amended 7 of 1990 s. 2)

- (4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.
- (5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.
- (6) This section shall have effect-
- (a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he had applied therefor in pursuance of the prospectus; and
 - (b) in relation to a prospectus offering shares for sale with the following modifications, that is to say-
 - (i) references to sale shall be substituted for references to allotment;
 - (ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and
 - (iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the default.

(Added 78 of 1972 s. 13)
[cf. 1948 c. 38 s. 51 U.K.]

Section:	45	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	46	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	47	(Repealed 80 of 1974 s. 3)		30/06/1997
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Section:	47A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-headings repealed 28 of 2012 ss. 912 & 920

Section:	47B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	47C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	47D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	47E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	47F	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	47G	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	48	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	48A	Construction of references to offering shares or debentures to the public	E.R. 2 of 2012	02/08/2012
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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. (Added 30 of 2004 s. 2)

(Added 78 of 1972 s. 14)
[cf. 1948 c. 38 s. 55 U.K.]

Section:	48B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Note:

Section 48B(3)(c) was repealed by section 4(a) of the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 42 of that Ordinance provides as follows-

"42. Validation of certain applications of share premium accounts

Where, at any time before the commencement* of section 4(a), a share premium account has been applied by a company pursuant to section 48B(3)(c) of the principal Ordinance, then, notwithstanding section 49A(1)(b) of the principal Ordinance, that application of that account shall, by virtue of this section, be as valid and effectual as if that section had never been enacted."

Before its repeal, section 48B(3)(c) read-

"(c) in providing for the premium payable on redemption of any redeemable preference shares of the company."

*** Commencement date: 11 November 1999.**

Section:	48C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	48D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	48E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	48F	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-headings repealed 28 of 2012 ss. 912 & 920

Section:	49A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49BA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49F	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49G	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49H	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49I	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	49J	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49K	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49L	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49M	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49N	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49O	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49P	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	49Q	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49R	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	49S	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	50	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	51	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	52	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	53	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	54	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	55	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	56	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	57	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	57A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	57B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	57C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	58	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	59	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	60	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	61	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	61A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	62	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	63	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	63A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	64	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	64A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	65	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	65A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	66	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	67	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	68	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	69	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	69A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	70	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	71	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	71A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	72	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	73	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	73A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	74	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	74A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Special Provisions as to Debentures

Section:	74B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	75	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	75A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	75B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	76	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	77	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	78	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79	Payment of certain debts out of assets subject to floating charge in priority to claims under the charge	E.R. 2 of 2012	02/08/2012
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- (1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a charge which, as created, was a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts, which in every winding-up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall, according to their respective priorities under section 265, be paid out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures. (Amended 10 of 1987 s. 3)
- (1A) In the application of the provisions of Part V, section 265 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid. (Added 6 of 1984 s. 45)
- (2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.
- (2A) Where the date referred to in subsection (2) occurred before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), subsections (1) and (2) shall have effect with the substitution, for references to the provisions of Part V, of references to the provisions which, by virtue of section 265(7) are deemed to remain in force in the case therein mentioned, and subsection (1A) shall not apply. (Added 6 of 1984 s. 45)
- (3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

(Amended 6 of 1984 s. 45)
[cf. 1925 c. 23 s. 78 U.K.]

Note:

* **Commencement date: 31 August 1984.**

Part:	IIA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79F	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79G	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	79H	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79I	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79J	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79K	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79L	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79M	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79N	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79O	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	79P	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Part:	III	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	80	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	81	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	82	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	83	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	84	(Repealed 6 of 1984 s. 50)		30/06/1997
Section:	85	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	86	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014

Section:	87	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	88	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	89	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	90	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	91	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Part:	IV	Management and Administration	E.R. 1 of 2014	03/03/2014
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(*Format changes—E.R. 1 of 2014)

Note:

* The format of Part IV has been updated to the current legislative styles.

Section:	92	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	93	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	94	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	95	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Register of Members

Section:	95A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	96	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	97	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	98	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	99	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	100	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	101	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	102	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	103	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	104	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	105	(Repealed 31 of 1981 s. 95)		30/06/1997
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Section:	106	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	107	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	108	(Repealed 3 of 1997 s. 31)		30/06/1997
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Section:	109	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	110	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	111	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Meetings

(Amended 28 of 2012 ss. 912 & 920)

Section:	112	(Repealed 6 of 1984 s. 74)		30/06/1997
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Section:	113	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114AA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	114E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	115	Representation of companies at meetings of creditors	L.N. 163 of 2013	03/03/2014
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- (1) A corporation may, if it is a creditor (including a holder of debentures) of a company, by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Ordinance or of any rules made under it.
- (2) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the corporation which the person represents as that corporation could exercise if it were an individual creditor of the company.
(Replaced 28 of 2012 ss. 912 & 920)

Section:	115A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116BA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116BB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116BC	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	116C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	117	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	118	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	119	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	119A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	120	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	121	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	122	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	123	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	124	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	125	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	126	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	127	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	128	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	129	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	129A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	129B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	129C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	129D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	129E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	129F	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	129G	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	130	(Repealed 6 of 1983 s. 60)		30/06/1997
Section:	131	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	132	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	133	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	134	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	135	(Repealed 68 of 1972 s. 52)		30/06/1997
Section:	136	(Repealed 68 of 1972 s. 52)		30/06/1997
Section:	137	(Repealed 68 of 1972 s. 52)		30/06/1997
Section:	138	(Repealed 68 of 1972 s. 52)		30/06/1997
Section:	139	(Repealed 68 of 1972 s. 52)		30/06/1997
Section:	140	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	140A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	140B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	141	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014

Section:	141A	(Repealed 30 of 1999 s. 9)	L.N. 239 of 1999	11/11/1999
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Section:	141B	(Repealed 30 of 1999 s. 9)	L.N. 239 of 1999	11/11/1999
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Section:	141C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	141CB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CC	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CD	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CE	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CF	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CG	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	141CH	(Repealed 12 of 2010 s. 34)	L.N. 132 of 2010	10/12/2010
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Subheading repealed 12 of 2010 s. 33

Section:	141D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	141E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	142	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	143	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	144	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	145	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	145A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	145B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	146	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	146A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	147	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	148	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	149	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	149A	(Repealed 72 of 1994 s. 5)		30/06/1997
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Section:	150	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	151	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	152B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152E	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152F	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152FA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	152FB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152FC	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152FD	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	152FE	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	153	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	153A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	153B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	153C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	154	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	154A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	154B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	155	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	155A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	155B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	155C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	156	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157E	(Repealed 30 of 1994 s. 3)		30/06/1997
Section:	157F	(Repealed 30 of 1994 s. 3)		30/06/1997
Section:	157G	(Repealed 75 of 1993 s. 10)		30/06/1997
Section:	157H	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157HA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157I	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	157J	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	158	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	158A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	158B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	158C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014

Section:	159	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	160	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	161	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	161A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	161B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	161BA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	161BB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	161C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	162	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	162A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	162B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	163	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	163A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	163B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	163C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	163D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	164	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014

Section:	165	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	166	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	166A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	167	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	168B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Part:	IVAAA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAC	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAD	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAE	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAF	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAG	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAH	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BAI	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Part:	IVAA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BC	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BD	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BE	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BF	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BG	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BH	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BI	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BJ	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	168BK	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Part:	IVA	Disqualification of Directors	E.R. 1 of 2014	03/03/2014
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(Part IVA added 30 of 1994 s. 5)
(*Format changes—E.R. 1 of 2014)

Note:

* The format of Part IVA has been updated to the current legislative styles.

Section:	168C	Interpretation	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) In this Part, *company* (公司) means-
- (a) a company within the meaning of section 2; (Amended 30 of 2004 s. 2)

- (b) an unregistered company within the meaning of Part X (other than a partnership, whether limited or not, or an association)-
 - (i) wherever incorporated;
 - (ii) carrying on business in Hong Kong or which has carried on business in Hong Kong; and
 - (iii) which is capable of being wound up under this Ordinance; or (Amended 30 of 2004 s. 2)
 - (c) a registered non-Hong Kong company. (Added 30 of 2004 s. 2. Amended 28 of 2012 ss. 912 & 920)
- (2) (Repealed 28 of 2012 ss. 912 & 920)

(Replaced 28 of 2003 s. 74)

Section:	168D	Disqualification orders: general	E.R. 1 of 2014	03/03/2014
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- (1) In the circumstances specified in this Part, a court may, and under section 168H shall, make against a person a disqualification order, that is to say an order that he shall not, without leave of the court-
 - (a) be a director of a company;
 - (b) be a liquidator of a company;
 - (c) be a receiver or manager of a company's property; or
 - (d) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company,
 for a specified period beginning with the date of the order.
- (2) In each section which gives to a court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the maximum (and, in section 168H, the minimum) period of disqualification which may or, as the case may be, shall be imposed by means of the order.
- (3) Where a disqualification order is made against a person who is already subject to such an order, the periods specified in those orders shall run concurrently.
- (4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

Section:	168E	Disqualification on conviction of indictable offence	E.R. 1 of 2014	03/03/2014
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- (1) The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily)-
 - (a) in connection with the promotion, formation, management or liquidation of a company; or
 - (b) in connection with the receivership or management of a company's property,
 or any other indictable offence his conviction for which necessarily involves a finding that he acted fraudulently or dishonestly.
- (2) In subsection (1) **the court** (法院) means the Court of First Instance or the court by or before which the person is convicted of the offence.
- (3) The maximum period of disqualification under this section is, where the disqualification order is made-
 - (a) by a judge of the Court of First Instance, 15 years;
 - (b) by a judge of the District Court, 10 years;
 - (c) by a magistrate, 5 years.
- (4) Where a disqualification order is made by a magistrate and the Official Receiver or-
 - (a) the liquidator;
 - (b) a past or present member; or
 - (c) a creditor,
 of the company affected believes that the facts would justify a disqualification order for a longer period, he may apply to the Court of First Instance for such a disqualification order and it may, if it considers it appropriate in the circumstances, make an order for such longer period as it determines.

(Amended 25 of 1998 s. 2)

Section:	168F	Disqualification for persistent breaches of specified provisions*	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) The court may make a disqualification order against a person where it appears to it that the person has been persistently in default in relation to the specified provisions.
- (2) On an application to the court for an order to be made under this section, the fact that a person has been persistently in default in relation to the specified provisions may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of application the person has been adjudged guilty (whether or not on the same occasion) of 3 or more defaults in relation to the specified provisions.
- (3) A person is to be treated under subsection (2) as being adjudged guilty of a default in relation to a specified provision if— (Amended 28 of 2012 ss. 912 & 920)
 - (a) the person is convicted of an offence consisting in a contravention of a specified provision (whether on the person's own part or on the part of any company); or
 - (b) an order of the court is made against the person under—
 - (i) in the case of a specified provision of the pre-amended Ordinance or this Ordinance, section 279, 302 or 306; or
 - (ii) in the case of a specified provision of the Companies Ordinance (Cap 622), section 898 of that Ordinance.
- (4) For the purposes of this section, **court** (法院) includes a magistrate where the application under this section is made in the course of a prosecution in which the person is adjudged guilty of a default referred to in subsection (1) and, as a result, subsection (2) applies to the person.
- (4A) In this section—
specified provision (指明條文) means a provision of the pre-amended Ordinance, this Ordinance, or the Companies Ordinance (Cap 622), requiring—
 - (a) any return, accounts or other document to be filed with, or delivered or sent to, the Registrar; or
 - (b) notice of any matter to be given to the Registrar. (Added 28 of 2012 ss. 912 & 920)
- (5) The maximum period of disqualification under this section is 5 years.

(Amended 28 of 2012 ss. 912 & 920)

Note:

* (Amended 28 of 2012 ss. 912 & 920)

Section:	168G	Disqualification for fraud, etc., in winding up	E.R. 1 of 2014	03/03/2014
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- (1) The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he-
 - (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 275; or
 - (b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager.
- (2) The maximum period of disqualification under this section is 15 years.
- (3) In this section, **officer** (高級人員) includes a shadow director.

Section:	168H	Duty of court to disqualify unfit directors of insolvent companies	E.R. 1 of 2014	03/03/2014
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- (1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied-
 - (a) that he is or has been a director of a company which has at any time become insolvent whether while he was a director or subsequently; and
 - (b) that his conduct as a director of that company, either taken alone or taken together with his conduct as a

director of any other company or companies, makes him unfit to be concerned in the management of a company.

- (2) For the purposes of this section, a company becomes insolvent if-
 - (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or
 - (b) a receiver of the company is appointed,
 and references to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.
- (3) In this section and section 168I, **director** (董事) includes a shadow director.
- (4) Under this section the minimum period of disqualification is 1 year, and the maximum period is 15 years.

Section:	168I	Applications to court under section 168H: reporting provisions	E.R. 1 of 2014	03/03/2014
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- (1) If it appears to-
 - (a) the Financial Secretary; or (Amended 46 of 2000 s. 16)
 - (b) the Official Receiver, (Amended 46 of 2000 s. 16)
 that it is in the public interest that a disqualification order under section 168H should be made, an application for the making of such an order may be made by the Financial Secretary or the Official Receiver.
- (2) Except with the leave of the court, an application for the making under section 168H of a disqualification order against any person shall not be made after the end of the period of 4 years beginning, in the case of a company-
 - (a) that is wound up, with the day on which the winding up of the company, of which that person is or has been a director, is deemed, under section 184, 228A or 230, as the case may be, to have commenced; or
 - (b) that goes into receivership, with the day on which the receiver vacated his office.
- (3) If it appears to-
 - (a) the liquidator of a company that is being wound up by him; or
 - (b) the receiver in respect of a company for which he has been so appointed,
 that the matters listed in section 168H(1)(a) and (b) may apply to a person who is or has been a director of that company, he shall forthwith report the matter to the Official Receiver who may report the matter to the Financial Secretary. (Amended 46 of 2000 s. 16)
- (4) The Financial Secretary or the Official Receiver may require the liquidator or receiver of a company, or the former liquidator or receiver of a company-
 - (a) to furnish him with such information with respect to any person's conduct as a director of the company; and
 - (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,
 as the Financial Secretary or the Official Receiver, as the case may be, may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section.

Section:	168IA	Power to order public examination	E.R. 1 of 2014	03/03/2014
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- (1) The court may, on the application of the Official Receiver by a report stating that in his opinion a prima facie case exists against any person that would render him liable to a disqualification order under this Part, direct that the person shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the conduct of the business of a company or as to his conduct and dealings as a director.
- (2) The court may require a person referred to in subsection (1) to submit an affidavit to the court containing an account of the conduct of the business of the company or his conduct and dealings as a director of the company, or to produce any documents in his possession or under his control relating to the conduct of the business of the company or his conduct and dealings as a director of the company.
- (3) Where an application has been made under subsection (1), the court may require any person, other than a person referred to in subsection (1), whom the court deems capable of giving information concerning the conduct of the business of the company concerned or as to the conduct and dealings of directors of the company to produce any documents in his possession or under his control relating to the conduct of the business of the company or as to the conduct and dealings of directors of the company.

- (4) The Official Receiver shall take part in the examination, and for that purpose may employ a solicitor with or without counsel.
 - (5) The court may put such questions to the person examined as the court thinks fit.
 - (6) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.
 - (7) A person ordered to be examined under this section shall, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.
 - (8) There shall be made in writing such record of examination as the court thinks proper and the record shall be read over to or by the person examined, signed by him, and verified by affidavit at a venue fixed by the court.
 - (9) The verified notes of the examination of each person who was examined shall, subject to any order or direction of the court as to the manner and extent in and to which the notes shall be used, be admissible in evidence against any person against whom an order for examination has been made in any proceedings under this Part.
- (Added 46 of 2000 s. 17)

Section:	168J	Disqualification after investigation of company	L.N. 163 of 2013	03/03/2014
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- (1) The court may make a disqualification order against a person where, on an application under section 879(6) of the Companies Ordinance (Cap 622), it is satisfied that the person's conduct in relation to the company makes the person unfit to be concerned in the management of a company.
 - (2) The maximum period of disqualification under this section is 15 years.
- (Replaced 28 of 2012 ss. 912 & 920)

Section:	168K	Matters for determining unfitness of directors	E.R. 1 of 2014	03/03/2014
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- (1) Where it falls to a court to determine whether a person's conduct as a director of any particular company or companies makes him unfit to be concerned in the management of a company, the court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular-
 - (a) to the matters mentioned in Part I of the Fifteenth Schedule; and
 - (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule, and references in that Schedule to the director and the company are to be read accordingly.
- (2) Section 168H(2) applies for the purposes of this section and the Fifteenth Schedule as it applies for the purposes of section 168H.
- (3) The Financial Secretary may by order modify any of the provisions of the Fifteenth Schedule; and such an order may contain such transitional provisions as may appear to the Financial Secretary necessary or expedient.
- (4) In this section and the Fifteenth Schedule, **director** (董事) includes a shadow director.

Section:	168L	Fraudulent trading	E.R. 1 of 2014	03/03/2014
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- (1) Where the court makes a declaration under section 275 that a person is liable for all or any of the debts or other liabilities of a company, the court may, if it thinks fit and whether or not any person applies for such an order, make a disqualification order against the person to whom the declaration relates.
- (2) The maximum period of a disqualification order under this section is 15 years.

Section:	168M	Criminal penalties	E.R. 1 of 2014	03/03/2014
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If a person acts in contravention of a disqualification order, he is guilty of an offence and is liable to imprisonment and a fine.

Section:	168N	Offences by body corporate	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) Where a body corporate is guilty of an offence of acting in contravention of a disqualification order, and it is

proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, company secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly. (Amended 28 of 2012 ss. 912 & 920)

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Section:	168O	Personal liability for company's debts where person acts while disqualified	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) A person is personally responsible for all the relevant debts of a company if at any time-
- in contravention of a disqualification order or of section 480(1) of the Companies Ordinance (Cap 622) he is involved in the management of the company; or (Amended 28 of 2012 ss. 912 & 920)
 - as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order or to be an undischarged bankrupt.
- (2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.
- (3) For the purposes of this section the relevant debts of a company are-
- in relation to a person who is personally responsible under subsection (1)(a), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company; and
 - in relation to a person who is personally responsible under subsection (1)(b), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in subsection (1)(b).
- (4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Section:	168P	Application for disqualification order	E.R. 1 of 2014	03/03/2014
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Expanded Cross Reference:

168E, 168F, 168G

- (1) A person intending to apply for the making of a disqualification order by the court, other than an application made in the course of a proceeding for the prosecution of an offence, shall give not less than 10 days' notice of his intention to the person against whom the order is sought; and on the hearing of the application the last-mentioned person may appear and himself give evidence or call witnesses.
- (2) An application to a court for the making against any person of a disqualification order under-
- section 168F may be made by the Registrar; and
 - any of sections 168E to 168G may be made by the Official Receiver, the Financial Secretary or by the liquidator or any past or present member or creditor of any company in relation to which that person has committed or is alleged to have committed an offence or other default. < * Note - Exp. X-Ref.: Sections 168E, 168F, 168G * >
- (3) On the hearing of any application under this Part made by the Registrar, the Official Receiver, the Financial Secretary or the liquidator, the applicant shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.
- (4) Where, under this Part, a court may make a disqualification order in the course of a proceeding for the prosecution of an offence, it may make such an order if it thinks fit and whether or not any person applies for such an order.

Section:	168Q	Application for leave under an order	E.R. 1 of 2014	03/03/2014
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Where-

- (a) a person who is the subject of a disqualification order made under this Part applies for leave of the court to participate in a company in one of the ways prohibited under section 168D(1); and
 - (b) the disqualification order to which the application relates was made as a result of an application by the Financial Secretary, the Registrar, the Official Receiver or a liquidator,
- the Financial Secretary, Registrar, Official Receiver or liquidator, as the case may be, shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

Section:	168R	Register of disqualification orders	L.N. 156 of 2015	14/12/2015
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- (1) The Financial Secretary may make regulations requiring officers of courts to furnish the Registrar with such particulars as the regulations may specify of cases in which-
 - (a) a disqualification order is made; or
 - (b) any action is taken by a court in consequence of which such an order is varied or ceases to be in force; or
 - (c) leave is granted by a court for a person subject to such an order to do anything which otherwise the order prohibits him from doing,
 and the regulations may specify the time within which, and the form and manner in which, such particulars are to be furnished.
- (2) The Registrar shall, from the particulars so furnished, maintain a register of orders and of cases in which leave has been granted as mentioned in subsection (1)(c).
- (3) When an order of which entry is made in the register ceases to be in force, the Registrar shall delete the entry from the register and all particulars relating to it which have been furnished to him under this section.
- (4) The register shall be open to inspection on payment of such fee as may be payable under a regulation made under section 26 of the Companies Ordinance (Cap 622). (Amended 28 of 2012 ss. 912 & 920)
- (5) For the purposes of this section-
court (法院) includes-
 - (a) a magistrate;
 - (b) a Tribunal within the meaning of section 2 of the repealed Ordinance; (Amended 14 of 2012 s. 176)
 - (c) the Market Misconduct Tribunal within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); and (Amended 14 of 2012 s. 176)
 - (d) the Competition Tribunal established by section 134 of the Competition Ordinance (Cap 619); (Added 14 of 2012 s. 176 and E.R. 1 of 2013)

disqualification order (取消資格令) means an order of the court under-

- (a) section 168E, 168F, 168G, 168H, 168J or 168L;
- (b) section 23(1)(a) or 24(1) of the repealed Ordinance; (Amended 14 of 2012 s. 176)
- (c) section 214(2)(d), 257(1)(a), 258(1) or 303(2)(a) of the Securities and Futures Ordinance (Cap 571); or (Amended 14 of 2012 s. 176)
- (d) section 101 of the Competition Ordinance (Cap 619); (Added 14 of 2012 s. 176 and E.R. 1 of 2013)

repealed Ordinance (已廢除條例) means the Securities (Insider Dealing) Ordinance (Cap 395) repealed under the Securities and Futures Ordinance (Cap 571). (Replaced 5 of 2002 s. 407)

Section:	168S	Regulations	E.R. 1 of 2014	03/03/2014
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- (1) The Chief Justice may make regulations respecting proceedings in the Court of First Instance for a disqualification order under this Part. (Amended 25 of 1998 s. 2)
- (2) The Financial Secretary may make regulations respecting the reporting to the Official Receiver of the conduct of persons as directors under section 168I(3).

Section:	168T	Transitional	E.R. 1 of 2014	03/03/2014
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- (1) Sections 168E and 168G do not apply in relation to anything done before this Part comes into operation by a person in his capacity as liquidator of a company or as receiver or manager of a company's property.
- (2) Subject to subsection (1), sections 168E and 168G apply in a case where a person is convicted of an offence, referred to in the relevant section, which he committed (and, in the case of a continuing offence, has ceased to commit) before this Part comes into operation; but in such a case a disqualification order under the relevant section shall not be made for a period in excess of 5 years.
- (3) Section 168F applies in respect of matters that took place before or after this Part comes into operation.

Part:	V	Winding Up	E.R. 2 of 2012	02/08/2012
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(*Format changes—E.R. 2 of 2012)

Note:

* The format of Part V has been updated to the current legislative styles.

Section:	169	Modes of winding up	E.R. 2 of 2012	02/08/2012
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(i) Preliminary

Modes of Winding Up

- (1) The winding up of a company may be either-
 - (a) by the court; or
 - (b) voluntary. (Amended 6 of 1984 s. 126)
- (2) The provisions of this Ordinance with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

[cf. 1929 c. 23 s. 156 U.K.]

Section:	170	Liability as contributories of present and past members	L.N. 163 of 2013	03/03/2014
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Contributories

- (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) and the following qualifications-
 - (a) a past member shall not be liable to contribute if he has ceased to be a member for 1 year or upwards before the commencement of the winding up;
 - (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
 - (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contribution required to be made by them in pursuance of this Ordinance;
 - (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
 - (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection (3), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
 - (f) nothing in this Ordinance or the Companies Ordinance (Cap 622) shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract; (Amended 28 of 2012 ss. 912 & 920)
 - (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of

competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

- (2) In the winding up of a limited company, any director, whether past or present, whose liability is, under the provisions of the pre-amended Ordinance, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: (Amended 28 of 2012 ss. 912 & 920)

Provided that-

- (a) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
 - (b) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
 - (c) subject to the articles of the company, a director shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up. (Amended 6 of 1984 s. 127)
- (3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

[cf. 1929 c. 23 s. 157 U.K.]

Section:	171	Definition of contributory	E.R. 2 of 2012	02/08/2012
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The term **contributory** (分擔人) means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

[cf. 1929 c. 23 s. 158 U.K.]

Section:	172	Nature of liability of contributory	E.R. 2 of 2012	02/08/2012
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The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

[cf. 1929 c. 23 s. 159 U.K.]

Section:	173	Contributories in case of death of member	E.R. 2 of 2012	02/08/2012
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- (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly. (Amended 6 of 1984 s. 128)
- (2) (Repealed 6 of 1984 s. 128)
- (3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereof of the money due.

[cf. 1929 c. 23 s. 160 U.K.]

Section:	174	Contributories in case of bankruptcy of member	E.R. 2 of 2012	02/08/2012
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If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories-

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

[cf. 1929 c. 23 s. 161 U.K.]

Section:	175	(Repealed 27 of 1971 s. 15)		30/06/1997
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Section:	176	Jurisdiction to wind up companies	E.R. 2 of 2012	02/08/2012
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(ii) Winding Up by the Court

Jurisdiction

The Court of First Instance shall have jurisdiction to wind up any company.

(Replaced 6 of 1984 s. 129. Amended 25 of 1998 s. 2)

Section:	177	Circumstances in which company may be wound up by court	L.N. 163 of 2013	03/03/2014
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Cases in which Company may be wound up by Court

- (1) A company may be wound up by the court if-
 - (a) the company has by special resolution resolved that the company be wound up by the court;
 - (b) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
 - (c) the company has no members; (Replaced 28 of 2003 s. 76)
 - (d) the company is unable to pay its debts;
 - (e) the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved;
 - (f) the court is of opinion that it is just and equitable that the company should be wound up.
- (2) On the application of the Registrar for the winding up of a company, the company may be wound up by the court if it appears to the court-
 - (a) that the company is being carried on for an unlawful purpose or any purpose lawful in itself but one which cannot be carried out by a company; or
 - (b) that throughout a period of not less than 6 months ending on the date of the winding-up petition the company has not had-
 - (i) in the case of a private company, at least one director; or
 - (ii) in the case of a company not being a private company, at least 2 directors; or (Replaced 28 of 2003 s. 76)
 - (c) that throughout the period referred to in paragraph (b) the company has not had a company secretary; or
 - (d) that the company- (Amended 28 of 2012 ss. 912 & 920)
 - (i) had failed to pay the annual registration fee payable under the Eighth Schedule of the pre-amended Ordinance; or
 - (ii) has failed to pay the annual registration fee payable under a regulation made under section 26 of the Companies Ordinance (Cap 622); or
 - (e) without prejudice to paragraphs (a) to (d), that the company has been persistently in breach of its specified obligations.
- (3) A company registered before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) may by special resolution alter the provisions contained in its articles by adding a provision to the effect that the company is to be dissolved on the occurrence of a specified event, with or without another provision providing for or prohibiting the alteration of the added provision: (Amended 28 of 2012 ss. 912 & 920)
 Provided that, where a private company passes such a resolution, an application may be made to the court for the alteration to be cancelled, and if such an application is made, the alteration shall not have effect except in so far as it is confirmed by the court. (Amended 28 of 2003 s. 76)
- (4) Where a private company passes a resolution under this section altering the provisions contained in its articles, sections 90(5)(a), (5)(b) and (8) and 91(1)(a), (5) and (6) of the Companies Ordinance (Cap 622) apply in relation to the alteration and to any application made under this section in the same manner as they apply in relation to alterations made under that section 90 and to applications made under that section 91. (Replaced 28 of 2003 s. 76)

- (5) Where a company (not being a private company) passes a resolution under this section altering the provisions contained in its articles, section 90(5)(c), (6) and (8) of the Companies Ordinance (Cap 622) applies in relation to the alteration made under this section in the same manner as it applies in relation to alterations made under that section 90. (Added 28 of 2003 s. 76)
- (6) In relation to a resolution for altering the conditions of a company's memorandum that is passed by a company (whether a private company or not) under this section before the commencement+ of section 76 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of this section in force immediately before that commencement shall continue to have effect as if section 76 of that Ordinance had not been enacted. (Added 28 of 2003 s. 76)
- (7) In this section—
specified obligation (指明義務) means an obligation under the pre-amended Ordinance, this Ordinance or the Companies Ordinance (Cap 622). (Added 28 of 2012 ss. 912 & 920)
 (Replaced 6 of 1984 s. 130. Amended 28 of 2012 ss. 912 & 920)
 [cf. 1948 c. 38 s. 222 U.K.]

Note:

* **Commencement date: 31 August 1984.**

+ **Commencement date: 13 February 2004.**

Section:	178	Definition of inability to pay debts	E.R. 2 of 2012	02/08/2012
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- (1) A company shall be deemed to be unable to pay its debts-
- if a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due equal to or exceeding the specified amount, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or (Amended 81 of 1976 s. 2; 28 of 2003 s. 77)
 - if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
 - if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.
- (2) Subsection (1)(a) shall apply to 2 or more creditors to whom the company is indebted in respect of unpaid wages, wages in lieu of notice, severance payments, pay for untaken statutory holidays or pay for untaken annual leave, as the case may be, or all or any of them if the total of that indebtedness exceeds the sum referred to in that subsection, as if those creditors were a single creditor, and a demand under that subsection shall be valid if signed by any one or more of those creditors. (Added 12 of 1985 s. 29(3). Amended 48 of 1987 s. 8; 38 of 1989 s. 7; 7 of 2012 s. 10)
- (3) For the purpose of subsection (1)(a), **specified amount** (指明款額) means the amount of \$10000 or, where an amount is prescribed under subsection (4), the prescribed amount. (Added 28 of 2003 s. 77)
- (4) The Financial Secretary may, by regulation, prescribe any amount for the purposes of subsection (3). (Added 28 of 2003 s. 77)
- (5) In subsection (2)-
pay for untaken annual leave (未放年假薪酬), **pay for untaken statutory holidays** (未放法定假日薪酬) and **wages** (工資) have the same meaning as in section 265. (Added 7 of 2012 s. 10)
 [cf. 1929 c. 23 s. 169 U.K.]

Section:	179	Provisions as to applications for winding up	L.N. 163 of 2013	03/03/2014
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Petition for Winding Up and Effects thereof

- (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories or the trustee in bankruptcy or the personal

representative of a contributory, or by all or any of those parties, together or separately: (Amended 6 of 1984 s. 131)

Provided that-

- (a) a contributory shall not be entitled to present a winding-up petition unless-
 - (i) the company has no members; or (Replaced 28 of 2003 s. 78)
 - (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder; and
- (b) (Repealed 6 of 1984 s. 131)
- (c) the court shall not give a hearing to a winding-up petition presented by contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the court; and
- (d) in a case falling within section 879(1) of the Companies Ordinance (Cap 622), a winding-up petition may be presented by the Financial Secretary; and (Added 6 of 1984 s. 131. Amended 28 of 2012 ss. 912 & 920)
- (e) in a case referred to in section 177(1)(c) or (2), a winding-up petition may be presented by the Registrar. (Added 6 of 1984 s. 131)
- (2) Where a company is being wound up voluntarily, a winding-up petition may be presented by the Official Receiver as well as by any other person authorized in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories. (Amended 6 of 1984 s. 131)
- (3) (Repealed 6 of 1984 s. 131)

[cf. 1929 c. 23 s. 170 U.K.]

Section:	179A	Appearance of Official Receiver	E.R. 2 of 2012	02/08/2012
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On the hearing of a winding-up petition by the court, the Official Receiver may appear and call, examine and cross-examine any witness and, if he so thinks fit, support or oppose the making of a winding-up order.

(Added 69 of 1979 s. 4)

Section:	180	Powers of court on hearing petition	E.R. 2 of 2012	02/08/2012
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- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (1A) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court shall not refuse to make a winding-up order on the ground only that some other remedy is available to the petitioners unless it is also of opinion that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy. (Added 51 of 1978 s. 7)
- (2) (Repealed 6 of 1984 s. 132)

[cf. 1929 c. 23 s. 171 U.K.]

Section:	180A	Hearing of unopposed petition by Registrar of High Court	E.R. 2 of 2012	02/08/2012
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- (1) Subject to general rules limiting the power conferred by this section, the jurisdiction of the court under this Part may, in the case of an unopposed petition for winding-up by the court, be exercised by the Registrar of the High Court.
- (2) Any hearing of a petition in pursuance of the jurisdiction conferred on the Registrar of the High Court by this section shall be in open court.

(Added 55 of 1988 s. 2. Amended 25 of 1998 s. 2)

Section:	181	Power to stay or restrain proceedings against company	E.R. 2 of 2012	02/08/2012
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At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company or any creditor or contributory may-

- (a) where any action or proceeding against the company is pending in the Court of First Instance or the Court of Appeal, apply to the court in which the action or proceeding is pending for a stay of proceedings therein;
- (b) where any action or proceeding against the company is pending in any court or tribunal other than the Court of First Instance or the Court of Appeal, apply to the Court of First Instance to restrain further proceedings in the action or proceeding,

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

(Replaced 6 of 1984 s. 133. Amended 25 of 1998 s. 2)
[cf. 1948 c. 38 s. 226 U.K.]

Section:	182	Avoidance of dispositions of property, &c. after commencement of winding up	E.R. 2 of 2012	02/08/2012
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In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

[cf. 1929 c. 23 s. 173 U.K.]

Section:	183	Avoidance of attachments, &c.	E.R. 2 of 2012	02/08/2012
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Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

[cf. 1929 c. 23 s. 174 U.K.]

Section:	184	Commencement of winding up by the court	E.R. 2 of 2012	02/08/2012
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Commencement of Winding Up

- (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.
- (2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

[cf. 1929 c. 23 s. 175 U.K.]

Section:	185	Copy of order to be delivered to Registrar	E.R. 2 of 2012	02/08/2012
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Consequences of Winding-up Order

On the making of a winding-up order, a copy of the order shall forthwith be delivered by the company, or otherwise as may be prescribed, to the Registrar for registration.

(Replaced 6 of 1984 s. 133)
[cf. 1948 c. 38 s. 230 U.K.]

Section:	186	Actions stayed on winding-up order	E.R. 2 of 2012	02/08/2012
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When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the

court may impose.

[cf. 1929 c. 23 s. 177 U.K.]

Section:	187	Effect of winding-up order	E.R. 2 of 2012	02/08/2012
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An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

[cf. 1929 c. 23 s. 178 U.K.]

Section:	188	(Repealed 30 of 1999 s. 15)	46 of 2000	01/07/2000
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Official Receiver and Liquidators

(Amended 46 of 2000 s. 19)

Section:	189	(Repealed 6 of 1984 s. 136)		30/06/1997
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Section:	190	Statement of company's affairs to be submitted to provisional liquidator or liquidator	L.N. 163 of 2013	03/03/2014
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- (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court thinks fit to order otherwise and so orders, be made out and submitted to the provisional liquidator or liquidator a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, addresses, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the provisional liquidator or liquidator may require. (Amended 6 of 1984 s. 137; 46 of 2000 s. 20)
- (2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the company secretary of the company, or by such of the persons hereinafter in this subsection mentioned as the provisional liquidator or liquidator, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons- (Amended 6 of 1984 s. 137; 46 of 2000 s. 20; 28 of 2012 ss. 912 & 920)
 - (a) who are or have been directors or officers of the company;
 - (b) who have taken part in the formation of the company at any time within 1 year before the relevant date;
 - (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the provisional liquidator or liquidator capable of giving the information required; (Amended 46 of 2000 s. 20)
 - (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.
- (3) The statement shall be submitted within 28 days from the relevant date, or within such extended time as the provisional liquidator or liquidator or the court may for special reasons appoint. (Amended 46 of 2000 s. 20)
- (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the liquidator or provisional liquidator out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the provisional liquidator or liquidator may consider reasonable, subject to an appeal to the court. (Amended 46 of 2000 s. 20)
- (5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine and, for continued default, to a daily default fine. (Amended 6 of 1984 s. 137; 7 of 1990 s. 2)
- (5A) A statement required by this section may be used in evidence against any person making or concurring in making the statement. (Added 72 of 1994 s. 9)
- (6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.
- (7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court

and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly.

- (8) In this section, the expression *the relevant date* (有關日期) means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.

[cf. 1929 c. 23 s. 181 U.K.]

Section:	191	Report by Official Receiver or liquidator	E.R. 2 of 2012	02/08/2012
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- (1) In a case where a winding-up order is made, the liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 190, or, in a case where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court- (Amended L.N. 378 of 1989; 46 of 2000 s. 21)
- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
 - (b) if the company has failed, as to the causes of the failure; and
 - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company, or the conduct of the business thereof.
- (2) The Official Receiver or liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.
- (3) If the Official Receiver or liquidator states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the court shall have the further powers provided in section 222.

(Amended 6 of 1984 s. 138; 46 of 2000 s. 21)

[cf. 1929 c. 23 s. 182 U.K.]

Section:	192	Power of court to appoint liquidators	E.R. 2 of 2012	02/08/2012
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Subheading repealed 46 of 2000 s. 22

For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators, provisionally or otherwise, in accordance with sections 193 and 194.

(Amended 6 of 1984 s. 139; 46 of 2000 s. 23)

[cf. 1929 c. 23 s. 183 U.K.]

Section:	193	Appointment and powers of provisional liquidator	E.R. 2 of 2012	02/08/2012
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- (1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.
- (2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the Official Receiver or any other fit person may be appointed.
- (3) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

[cf. 1929 c. 23 s. 184 U.K.]

Section:	194	Appointment, style, etc. of liquidators	E.R. 2 of 2012	02/08/2012
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- (1) The following provisions with respect to liquidators shall have effect on a winding-up order being made- (Amended 3 of 1997 s. 41)
- (a) subject to paragraph (aa) and subsection (1A), the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such; (Amended 3 of 1997 s. 41; 46 of 2000 s. 24)
 - (aa) where under section 193 a person other than the Official Receiver is appointed as provisional liquidator, he

shall continue to act as the provisional liquidator until he or another person becomes the liquidator and is capable of acting as such; (Added 3 of 1997 s. 41)

- (b) the provisional liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator; (Amended 3 of 1997 s. 41; 46 of 2000 s. 24)
 - (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the court shall decide the difference and make such order thereon as the court may think fit;
 - (d) the court may make any appointment and order as it thinks fit if the creditors and contributories of the company do not pass a resolution or do not meet; (Replaced 46 of 2000 s. 24)
 - (e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
 - (f) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of the liquidator, and, where the Official Receiver is liquidator, by the style of the Official Receiver and liquidator, of the particular company in respect of which he is appointed, and not by his individual name.
- (1A) Where the Official Receiver-
- (a) is the provisional liquidator of the company by virtue of subsection (1)(a); and
 - (b) is of the opinion that the property of the company is not likely to exceed in value \$200000, he may, at any time, appoint 1 or more persons as provisional liquidator in his place. (Added 46 of 2000 s. 24)
- (2) Where the Official Receiver is the liquidator of the company, he may, at any time, apply to the court for the appointment of a person as a liquidator in his place. (Added 3 of 1997 s. 41)
 - (3) On an application under subsection (2) the court shall either make an appointment or decline to make one. (Added 3 of 1997 s. 41)
 - (4) Where a liquidator is appointed by the court under subsection (3), the liquidator shall give notice of his appointment to the company's creditors and contributories in accordance with the directions of the court. (Added 3 of 1997 s. 41)
 - (5) In a notice under subsection (4), the liquidator shall state his intention to summon meetings of the company's creditors and contributories, in accordance with section 206, for the purpose of determining-
 - (a) whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator; and
 - (b) who are to be the members of the committee, if appointed. (Added 3 of 1997 s. 41)

[cf. 1929 c. 23 s. 185 U.K.]

Section:	195	Provisions where person other than Official Receiver is appointed liquidator	E.R. 2 of 2012	02/08/2012
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Where in the winding up of a company by the court a person other than the Official Receiver is appointed provisional liquidator or liquidator under section 194, that person- (Amended 46 of 2000 s. 25)

- (a) shall forthwith give notice of his appointment to the Registrar in the specified form and give security in the prescribed manner to the satisfaction of the Official Receiver; (Replaced 46 of 2000 s. 25. Amended 28 of 2003 s. 79)
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance.

[cf. 1929 c. 23 s. 186 U.K.]

Section:	196	General provisions as to liquidators	L.N. 163 of 2013	03/03/2014
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- (1) A provisional liquidator or liquidator appointed under section 193 or 194 may resign or, on cause shown, be removed by the court. (Replaced 46 of 2000 s. 26)
- (1A) A provisional liquidator appointed under section 194(1A) shall be remunerated-
 - (a) in accordance with a scale of fees approved from time to time by the Official Receiver; or
 - (b) on such other basis as the Official Receiver approves in writing. (Added 46 of 2000 s. 26)
- (2) Subject to subsection (1A), where a person other than the Official Receiver is appointed liquidator, he shall receive such remuneration by way of percentage or otherwise as is determined- (Amended 46 of 2000 s. 26)

- (a) where there is a committee of inspection, by agreement between the liquidator and the committee of inspection; or
 - (b) where there is no committee of inspection or the liquidator and the committee of inspection fail to agree, by the court,
- and if two or more persons are appointed liquidators, their remuneration shall be distributed among them in such proportions as may be determined by the committee of inspection or the court, as the case may be. (Replaced 25 of 1985 s. 3)
- (2A) If the Official Receiver is of the opinion that the remuneration of a liquidator as determined under subsection (2)(a) should be reviewed the Official Receiver may apply to the court, and the court may make an order confirming, increasing or reducing the remuneration of the liquidator. (Added 25 of 1985 s. 3)
 - (3) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.
 - (4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Ordinance or the Companies Ordinance (Cap 622) required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed. (Amended 28 of 2012 ss. 912 & 920)
 - (5) Subject to the provisions of section 278, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

[cf. 1929 c. 23 s. 188 U.K.]

Section:	197	Custody of company's property	E.R. 2 of 2012	02/08/2012
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Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

[cf. 1929 c. 23 s. 189 U.K.]

Section:	198	Vesting of property of company in liquidator	E.R. 2 of 2012	02/08/2012
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Where a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

[cf. 1929 c. 23 s. 190 U.K.]

Section:	199	Powers of liquidator	E.R. 2 of 2012	02/08/2012
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- (1) Subject to section 193(3), the liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection- (Amended 46 of 2000 s. 27)
 - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company;
 - (b) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
 - (c) to appoint a solicitor to assist him in the performance of his duties;
 - (d) to pay any classes of creditors in full;
 - (e) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (f) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
- (2) Subject to section 193(3), the liquidator in a winding up by the court shall have power- (Amended 46 of 2000 s. 27)
 - (a) to sell the real and personal property and things in action of the company by public auction or private

- contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
 - (c) to prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
 - (d) to draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
 - (e) to raise on the security of the assets of the company any money requisite;
 - (f) to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
 - (g) to appoint an agent to do any business which the liquidator is unable to do himself;
 - (h) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.
- (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
 - (4) A provisional liquidator appointed under section 194(1A) shall have power-
 - (a) to take into his custody or under his control all the property to which the company concerned is or appears to be entitled;
 - (b) subject to subsection (6), to sell or dispose of perishable goods or other assets (but not including derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100000 and is likely to significantly diminish if they are not immediately sold or disposed of. (Added 46 of 2000 s. 27)
 - (5) A provisional liquidator appointed under section 194(1A) may, with the sanction of the court or the Official Receiver, exercise any power under subsection (1) or (2). (Added 46 of 2000 s. 27)
 - (6) No sale or disposal under subsection (4)(b) may be made to a person who is-
 - (a) a director or shadow director of the company concerned; or (Amended 28 of 2003 s. 80)
 - (b) an associate, within the meaning of section 51B of the Bankruptcy Ordinance (Cap 6), of the company or of any such director or shadow director,
 unless the sale or disposal has the sanction of the court or of the Official Receiver. (Added 46 of 2000 s. 27)
 - (7) The Official Receiver shall not be personally liable for costs for any refusal to grant sanction under subsection (5) or (6). (Added 46 of 2000 s. 27)

[cf. 1929 c. 23 s. 191 U.K.]

Section:	200	Exercise and control of liquidator's powers	E.R. 2 of 2012	02/08/2012
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- (1) Subject to the provisions of this Ordinance, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.
- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.
- (3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.
- (4) Subject to the provisions of this Ordinance, the liquidator shall use his own discretion in the administration of the assets and the distribution thereof among the creditors. (Amended 6 of 1984 s. 141)

- (5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

[cf. 1929 c. 23 s. 192 U.K.]

Section:	201	Books to be kept by liquidator	E.R. 2 of 2012	02/08/2012
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Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

[cf. 1929 c. 23 s. 193 U.K.]

Section:	202	Payments of liquidator into bank or Treasury	E.R. 2 of 2012	02/08/2012
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- (1) Every liquidator other than the Official Receiver of a company which is being wound up by the court shall, in such manner and at such times as the Official Receiver directs, pay the money received by him to the Companies Liquidation Account at the bank where such account is kept, and when the Official Receiver is the liquidator of such company he shall pay all moneys received by him in such capacity into the Companies Liquidation Account:

Provided that the Official Receiver may, on the application of the liquidator, authorize the liquidator to make his payments into and out of any other bank specified by the liquidator in such application, and thereupon those payments shall be made in the prescribed manner. (Amended 6 of 1984 s. 142; 30 of 1999 s. 16)

- (2) Subject to the proviso to subsection (1), where any such liquidator (other than the Official Receiver) receives any money in such capacity, he shall-
- (a) in the case of a sum not exceeding \$50000, pay the money without any deductions therefrom to the Companies Liquidation Account not later than 14 days after its receipt;
 - (b) in the case of any other sum, forthwith pay the money without any deductions therefrom to the Companies Liquidation Account. (Replaced 30 of 1999 s. 16)
- (2A) Where a liquidator retains any sum (including part of any sum) in contravention of subsection (2)(a) or (b), then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained at the rate of 20 per cent per annum, and shall be liable to disallowance of all or such part of his remuneration as the court may think just, and to be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default. (Added 30 of 1999 s. 16)
- (3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

[cf. 1929 c. 23 s. 194 U.K.]

Section:	203	Audit of liquidator's accounts	E.R. 2 of 2012	02/08/2012
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- (1) Every liquidator (other than the Official Receiver) of a company which is being wound up by the court shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send to the Official Receiver, an account of his receipts and payments as liquidator. (Amended 38 of 1987 s. 2)
- (2) The account shall be in a prescribed form and shall be made in duplicate. (Amended 30 of 1994 s. 6)
- (3) The liquidator shall furnish the Official Receiver with such vouchers and information relating to the account as he requires, and the Official Receiver may at any time require the production of, and inspect, any books or accounts kept by the liquidator. (Replaced 38 of 1987 s. 2)
- (3A) The Official Receiver may at any time cause the account to be audited. (Added 38 of 1987 s. 2)
- (4) When the account has been audited (or, as the case may be, forthwith if the Official Receiver decides that the account need not be audited), one copy thereof shall be filed and kept by the Official Receiver, and the other copy shall be delivered to the court for filing, and each copy shall be open, upon payment of the prescribed fee, to the inspection of any creditor or any person having an interest. (Amended 6 of 1984 s. 143; 38 of 1987 s. 2)
- (5) The liquidator shall, when the account has been audited or, when he has been notified that the Official Receiver has decided that the account need not be audited, cause the account or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory: (Amended 38 of 1987

s. 2)

Provided that the Official Receiver may in any case dispense with compliance with this subsection. (Replaced 6 of 1984 s. 143)

- (6) Notwithstanding the fact that a liquidator has been notified that the Official Receiver has decided that the account need not be audited, the Official Receiver may subsequently cause the account to be audited, and in that event-
- (a) a copy of the audited account shall be filed and kept by the Official Receiver, and a further copy shall be delivered to the court for filing, and each copy shall be open, upon payment of the prescribed fee, to the inspection of any creditor or any person having an interest; and
 - (b) the liquidator shall cause the audited account or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory:
- Provided that the Official Receiver may in any case dispense with compliance with this paragraph. (Added 38 of 1987 s. 2)

[cf. 1929 c. 23 s. 195 U.K.]

Section:	204	Control of Official Receiver over liquidators	E.R. 2 of 2012	02/08/2012
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- (1) The Official Receiver shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.
- (2) The Official Receiver may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may, if he thinks fit, apply to the court to examine him or any other person on oath concerning the winding up.
- (3) The Official Receiver may also direct an investigation to be made of the books and vouchers of the liquidator. (Amended 6 of 1984 s. 144)

[cf. 1929 c. 23 s. 196 U.K.]

Section:	205	Release of liquidators	E.R. 2 of 2012	02/08/2012
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- (1) When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which may be urged by any creditor or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.
- (2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.
- (3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

[cf. 1929 c. 23 s. 197 U.K.]

Section:	206	Meetings of creditors and contributories to determine whether committee of inspection shall be appointed	E.R. 2 of 2012	02/08/2012
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Committees of Inspection

- (1) When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the provisional liquidator, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed. (Amended 3 of 1997 s. 42)
- (2) The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the court shall decide the difference and make such order thereon as the court may think fit.
[cf. 1929 c. 23 s. 198 U.K.]

Section:	207	Constitution and proceedings of committee of inspection	E.R. 2 of 2012	02/08/2012
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- (1) A committee of inspection appointed in pursuance of this Ordinance shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.
- (2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.
- (4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which 7 days' notice has been given, stating the object of the meeting.
- (7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy: (Amended 6 of 1984 s. 145)
Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled he may apply to the court and the court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order. (Added 6 of 1984 s. 145)
- (8) The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.
[cf. 1929 c. 23 s. 199 U.K.]

Section:	208	Powers of court where no committee of inspection	E.R. 2 of 2012	02/08/2012
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Where in the case of a winding up there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Ordinance authorized or required to be done or given by the committee.
[cf. 1929 c. 23 s. 200 U.K.]

Section:	209	Power to stay winding up	E.R. 2 of 2012	02/08/2012
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General Power of Court in case of Winding Up by Court

- (1) The court may at any time after an order for winding up, on the application either of the liquidator, or the Official Receiver, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.
- (2) On any application under this section the court may, before making an order, require the Official Receiver to

furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

- (3) A copy of every order made under this section shall forthwith be delivered by the company, or otherwise as may be prescribed, to the Registrar. (Added 6 of 1984 s. 146)

[cf. 1929 c. 23 s. 202 U.K.]

Section:	209A	Power of court to order winding up to be conducted as creditors' voluntary winding up	L.N. 163 of 2013	03/03/2014
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- (1) The court may on the application of the liquidator or any creditor made-
- (a) in the case of a company in respect of which an order has been made under section 227F, not later than 3 months from the date of such order; and
 - (b) in any other case, not later than 3 months from the date of a resolution to make such an application passed at any of the meetings (including an adjourned meeting) of creditors and of contributories held pursuant to section 194 or such further time as the court may permit,
- order that the winding up of a company ordered to be wound up by the court shall, from the date of the order made on such application, be conducted as if the winding up were a creditors' voluntary winding up.
- (2) Where an application is made under subsection (1), the court shall have regard to-
- (a) the wishes of the creditors and contributories of the company, as proved to it by sufficient evidence;
 - (b) the progress of the winding up (including in particular assets realized, proofs of debts submitted by creditors and whether a statement of affairs has been submitted under section 190);
 - (c) whether any report has been made to the court under-
 - (i) section 191(1); or
 - (ii) section 191(2) that in the liquidator's opinion a fraud has been committed;
 - (d) whether any director, former director or other officer of the company has been convicted under the pre-amended Ordinance, this Ordinance or any other law for any offence involving fraud, dishonesty, fraudulent trading, misfeasance or breach of duty in relation to the affairs of the company; (Amended 28 of 2012 ss. 912 & 920)
 - (e) whether any criminal proceedings in respect of any offence referred to in paragraph (d) are contemplated or have been instituted against any person referred to in that paragraph;
 - (f) whether the company forms part of a group of companies the affairs of which are proposed to be investigated or are being investigated under- (Amended 28 of 2012 ss. 912 & 920)
 - (i) a provision 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);
 - (ii) this Ordinance; or
 - (iii) any other law; (Amended 28 of 2012 ss. 912 & 920)
 - (g) whether there has been a failure on the part of the directors to provide a statement of affairs which the court considers satisfactory or to co-operate with the Official Receiver or liquidator or to comply with any requirement under this Ordinance in relation to the winding up of the company;
 - (h) whether any director or former director of any other company which has gone into liquidation within 5 years of the date when the company went into liquidation, has been directly or indirectly concerned in the management of the company;
 - (i) the fact that the insolvency of the company is a matter of public concern; and
 - (j) any other matter which the court considers appropriate in the particular circumstances.
- (3) Where an application has been made under subsection (1) in relation to a company in respect of which an order had been made under section 227F then, without affecting the generality of subsection (2)(a) and subject to subsection (4), the court shall before hearing the application direct that meetings of the creditors and contributories be called, held and conducted in such manner as the court may direct for the purpose of ascertaining the wishes of the creditors and contributories and may appoint a person to act as the chairman of any such meeting and to report the result of the meeting to the court.
- (4) Where the court is of the opinion that it is impractical to hold meetings of the creditors or of the contributories, the court may order that such other course of action as directed by the court be taken to ascertain the wishes of the creditors and contributories.
- (5) In an order made under this section, notwithstanding any other provision of this Ordinance, the court may, after

taking into consideration the wishes of the creditors and contributories, direct either that the liquidator of the winding up by the court appointed under section 192 continue to act as the liquidator or appoint any other person to act as the liquidator.

- (6) Where an application is made under subsection (1)-
- (a) the liquidator shall; and
 - (b) the Official Receiver may,
- submit to the court a report with regard to the application. (Replaced 46 of 2000 s. 28)
- (7) On the hearing of any application made under subsection (1), the Official Receiver may appear and call, examine or cross-examine any witness if he so thinks fit and may support or oppose the application.
(Added 59 of 1990 s. 2)

Section:	209B	Consequences of an order under section 209A	L.N. 163 of 2013	03/03/2014
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Where an order is made under section 209A that the winding up of a company shall be conducted as if it were a creditors' voluntary winding up-

- (a) the date of-
 - (i) the commencement of the winding up shall be the date deemed under section 184 to be the date of the commencement of the winding up by the court;
 - (ii) the appointment of the liquidator shall be the date of the appointment (or first appointment) of a provisional liquidator in the winding up by the court; and
 - (iii) the order for winding up shall be the date on which the order for winding up by the court is made, for any purpose for which the date of the commencement of the winding up, the date of the appointment of a liquidator or the date of the winding-up order respectively is relevant under this Ordinance;
- (b) sections 182, 183 and 186 shall continue to apply;
- (c) the rights of a creditor or a contributory under section 257 shall not be affected;
- (d) the fees of the liquidator and any charges or expenses due and payable under section 296 or under any other provision in this Ordinance up to the date of the order made under section 209A shall be paid forthwith out of the assets of the company in priority to all the other claims;
- (e) the statement of the affairs of the company required to be submitted under section 190 and the accounts of the liquidator up to the date of the order made under section 209A may be inspected by the creditors;
- (f) any creditor is entitled to have a copy of any document referred to in paragraph (e) on payment of reasonable photocopy charges (if any);
- (g) the court shall make such other orders as it considers appropriate to safeguard the books, records and documents of the company in the custody of the liquidator or the Official Receiver, and notwithstanding section 283 or any other provision of this Ordinance or the Companies Ordinance (Cap 622) they shall not be disposed of otherwise than as specified in such order. (Amended 28 of 2012 ss. 912 & 920)
(Added 59 of 1990 s. 2)

Section:	209C	Transitional	E.R. 2 of 2012	02/08/2012
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- (1) Any application for an order that the winding up of a company ordered to be wound up by the court be conducted as if it were a creditors' voluntary winding up made before the commencement of the Companies (Amendment) (No. 4) Ordinance 1990 (59 of 1990) (in this section referred to as ***the amending Ordinance***) shall be considered or continued with as if the amending Ordinance had not been enacted.
- (2) The liquidator or any creditor of any company in respect of which an order for winding up by the court was made after 30 August 1984 and before the commencement of the amending Ordinance may, before the expiration of 3 months from that commencement, apply to the court for an order that such winding up be conducted as if it were a creditors' voluntary winding up and the provisions of section 209A in force immediately before the commencement of the amending Ordinance shall apply to that application as if the amending Ordinance had not been enacted.
(Added 59 of 1990 s. 2)

Section:	210	Settlement of list of contributories and application of assets	E.R. 2 of 2012	02/08/2012
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- (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to

rectify the register of members in all cases where rectification is required in pursuance of this Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities:

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

- (2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

[cf. 1929 c. 23 s. 203 U.K.]

Section:	211	Delivery of property to liquidator	E.R. 2 of 2012	02/08/2012
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The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is prima facie entitled.

[cf. 1929 c. 23 s. 204 U.K.]

Section:	212	Payment of debts due by contributory to company and extent to which set-off allowed	E.R. 2 of 2012	02/08/2012
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- (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance.

- (2) The court in making such an order may-

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

- (3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

[cf. 1929 c. 23 s. 205 U.K.]

Section:	213	Power of court to make calls	E.R. 2 of 2012	02/08/2012
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- (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

- (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

[cf. 1929 c. 23 s. 206 U.K.]

Section:	214	Payment into bank of moneys due to company	E.R. 2 of 2012	02/08/2012
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- (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the court may direct to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

- (2) All moneys and securities paid or delivered into any bank pursuant to this Part in the event of a winding up by the court shall be subject in all respects to the orders of the court. (Amended 6 of 1984 s. 148)

[cf. 1929 c. 23 s. 207 U.K.]

Section:	215	Order on contributory conclusive evidence	E.R. 2 of 2012	02/08/2012
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- (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.
- (2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

[cf. 1929 c. 23 s. 208 U.K.]

Section:	216	Appointment of special manager	E.R. 2 of 2012	02/08/2012
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- (1) Where the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, or there are other grounds therefor, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application, appoint a special manager of the said estate or business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court. (Amended 6 of 1984 s. 149; 46 of 2000 s. 29)
- (2) The special manager shall give such security and account in such manner as the court may direct.
- (3) The special manager shall receive such remuneration as may be fixed by the court.

[cf. 1929 c. 23 s. 209 U.K.]

Section:	217	Exclusion of creditors not proving in time	E.R. 2 of 2012	02/08/2012
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- (1) The court may fix a date on or before which creditors are to prove their debts or claims.
- (2) Any creditor who has not proved his debt or claim on or before the date fixed under subsection (1) shall be excluded from the benefit of the distribution made next after that date and from the benefit of any previous distribution.

(Replaced 6 of 1984 s. 150)

[cf. 1948 c. 38 s. 264 U.K.]

Section:	218	Adjustment of rights of contributories	E.R. 2 of 2012	02/08/2012
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The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

[cf. 1929 c. 23 s. 211 U.K.]

Section:	219	Inspection of books by creditors and contributories	L.N. 163 of 2013	03/03/2014
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- (1) The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just. (Amended 6 of 1984 s. 151; 28 of 2012 ss. 912 & 920)
- (1A) Where an order for inspection is made under subsection (1), creditors or contributories may, in accordance with the order but not further or otherwise—
 - (a) inspect any books or papers in the possession of the company; or
 - (b) if the books or papers are kept by the company by recording the contents of the books or papers otherwise than in a legible form, inspect a reproduction of the recording or the relevant part of it in a legible form. (Added 28 of 2012 ss. 912 & 920)
- (2) Nothing in this section shall be taken as excluding or restricting any rights or powers conferred on a public officer by any enactment. (Added 6 of 1984 s. 151)

[cf. 1929 c. 23 s. 212 U.K.]

Section:	220	Power to order costs of winding up to be paid out of assets	E.R. 2 of 2012	02/08/2012
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The court may, in the event of the assets being insufficient to meet the costs, charges and expenses incurred in the winding up, make an order as to the payment thereof out of the assets in such order of priority as the court thinks just.
(Replaced 6 of 1984 s. 152)
[cf. 1948 c. 38 s. 267 U.K.]

Section:	221	Power to summon persons suspected of having property of company	E.R. 2 of 2012	02/08/2012
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- (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.
- (2) The court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.
- (3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien. (Amended L.N. 235 of 1996)
- (4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.
[cf. 1929 c. 23 s. 214 U.K.]

Section:	222	Power to order public examination of promoters, directors, etc.	E.R. 2 of 2012	02/08/2012
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- (1) Where an order has been made for winding up a company by the court, and the Official Receiver or liquidator has made a further report under this Ordinance stating that in his opinion- (Amended 46 of 2000 s. 30)
 - (a) a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; or
 - (b) (Repealed 46 of 2000 s. 30)
 the court may, after consideration of the report, direct that that person or officer shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof. (Replaced 6 of 1984 s. 153)
- (2) The Official Receiver or liquidator, as the case may be, shall take part in the examination, and for that purpose may, if specially authorized by the court in that behalf, employ a solicitor with or without counsel.
- (3) The Official Receiver or the liquidator, where he is not the party making the further report, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.
- (4) The court may put such questions to the person examined as the court thinks fit.
- (5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.
- (6) A person ordered to be examined under this section shall, before his examination, be furnished with a copy of the further report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: (Amended 6 of 1984 s. 153)
Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Receiver or liquidator, as the case may be, to appear on the hearing of the application and call the attention of the court to any matters which appear to the him to be relevant, and if the court, after hearing any evidence given or witnesses called by the Official Receiver or liquidator, as the case may be, grants the application, the court may allow the applicant such costs as in its discretion it may think fit.

- (7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (8) The court may, if it thinks fit, adjourn the examination from time to time.

(Amended 46 of 2000 s. 30)
[cf. 1929 c. 23 s. 216 U.K.]

Section:	222A	Jurisdiction of Registrar	E.R. 2 of 2012	02/08/2012
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- (1) Unless otherwise ordered by the court in a particular case, the Registrar may exercise and perform the powers and duties conferred or imposed upon the court by sections 221 and 222.
- (2) The Registrar may, if he exercises the jurisdiction conferred on him by this section-
- refer any examination for hearing by a judge;
 - at any time adjourn an examination for further hearing before a judge.
- (3) A judge may, if an examination is referred to him under subsection (2)(a), hear it himself, or refer it back to the Registrar for hearing by him.
- (4) A judge may, if an examination is adjourned under subsection (2)(b) for further hearing before a judge-
- continue the examination;
 - at any time direct that the examination be continued before the Registrar; and
 - make such other order or give such directions as he may consider proper. (Amended 80 of 1997 s. 102)
- (5) Any reference in this Ordinance to the court shall include a reference to the Registrar exercising the jurisdiction conferred on him by this section.
- (6) Notwithstanding subsection (5), the Registrar, when exercising the jurisdiction conferred by this section, shall not have power to make an order for the committal of a person for contempt of court.
- (7) In this section-

Registrar (司法常務官) means-

- the registrar of the High Court;
- any Senior Deputy Registrar of the High Court; (Added 10 of 2005 s. 172)
- any Deputy Registrar of the High Court; and
- any Assistant Registrar of the High Court appointed by the Chief Justice for the purposes of this section. (Amended 25 of 1998 s. 2)

(Added 49 of 1970 s. 2)

Section:	223	(Repealed 6 of 1984 s. 154)		30/06/1997
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Section:	224	Power to arrest absconding contributory or officer	E.R. 2 of 2012	02/08/2012
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The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory or any past or present officer of the company has absconded or is about to quit Hong Kong or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or debts due to the company or of avoiding examination respecting the affairs of the company, may order that the contributory or officer be arrested and his books and papers and movable personal property seized and him and them safely kept until such time as the court may order.

(Replaced 6 of 1984 s. 155)
[cf. 1948 c. 38 s. 271 U.K.]

Section:	225	Powers of court cumulative	E.R. 2 of 2012	02/08/2012
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Any powers by this Ordinance conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or officer or debtor of the company, or the estate of any contributory or officer or debtor, for the recovery of any call or other sums.

(Amended 6 of 1984 s. 156)
[cf. 1929 c. 23 s. 219 U.K.]

Section:	226	Delegation to liquidator of certain powers of court	E.R. 2 of 2012	02/08/2012
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Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Ordinance in respect of the following matters-

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls;
- (e) the fixing of a date on or before which creditors are to prove their debts or claims, (Replaced 6 of 1984 s. 157)

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

[cf. 1929 c. 23 s. 220 U.K.]

Section:	226A	Dissolution of company otherwise than by order of court	E.R. 2 of 2012	02/08/2012
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- (1) In the case of a company in respect of which the following conditions are satisfied-
 - (a) the affairs of the company have been completely wound up; and
 - (b) the liquidator has been granted his release by order of the court under section 205,
 the Official Receiver or the liquidator may deliver to the Registrar a certificate in the specified form, signed by the Official Receiver or the liquidator, as the case may be, stating that the company is a company in respect of which those conditions are satisfied.
- (2) The Registrar shall forthwith register any certificate delivered under subsection (1), and on the expiration of 2 years from the registration thereof the company shall be dissolved:
 Provided that the court may, on the application of the Official Receiver or the liquidator, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court may think fit.
- (3) The Official Receiver or the liquidator who has obtained an order under subsection (2) shall, within 7 days after the making of the order, deliver an office copy of the order to the Registrar for registration. (Replaced 28 of 2003 s. 81)

(Added 6 of 1984 s. 158. Amended 28 of 2003 s. 81)

Section:	227	Dissolution of company by order of court	E.R. 2 of 2012	02/08/2012
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- (1) When the affairs of a company have been completely wound up, the court, if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (2) A copy of the order shall within 14 days from the date thereof be delivered by the liquidator to the Registrar for registration.
- (3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)

(Replaced 6 of 1984 s. 158)

[cf. 1948 c. 38 s. 274 U.K.]

Section:	227A	Court may make a regulating order	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

227B, 227C, 227D, 227E

(iiA) Winding Up by the Court with a Regulating Order

- (1) Where it appears to the court on application being made by the Official Receiver, liquidator or by any creditor at any time after the presentation of a winding up petition that by reason of the large number of creditors or contributories or for any other reason the interest of the creditors so requires, it may, on or after the making of a winding-up order, order that the winding up of the company by the court shall be regulated specially by the court, and such order shall be known as a regulating order. (Amended 6 of 1984 s. 159)
- (2) Where a regulating order is made it shall be published in such manner as the court may direct, and sections 227B to 227E inclusive shall apply to the winding up. <* Note - Exp. X-Ref.: Sections 227B, 227C, 227D, 227E *>
- (3) Where a regulating order is made the Companies (Winding-up) Rules (Cap 32 sub. leg.H) shall apply mutatis mutandis to the Official Receiver, liquidator and committee of inspection appointed or acting after the making of a regulating order, and to the conduct of any ballot or other proceedings ordered by the court under section 227C or 227D.
- (4) Where any order made under section 227B, 227C or 227D prescribes any procedure it shall be deemed to be in substitution for the procedure which would be required by this Ordinance but for the making of such order, and in particular where any such order prescribes a procedure for doing something which would otherwise be done at a meeting of creditors or contributories no such meeting shall be required to be held.

(Added 22 of 1965 s. 2)

Section:	227B	Appointment of liquidator and committee of inspection	E.R. 2 of 2012	02/08/2012
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- (1) The court may on the application of the Official Receiver by order-
 - (a) dispense with the summoning of first meetings of creditors and contributories as required under sections 194 and 206 for the purpose of considering the appointment of a liquidator and a committee of inspection;
 - (b) appoint the Official Receiver or such other person or persons recommended by him as liquidator or liquidators; and
 - (c) appoint such qualified persons as it thinks fit as a committee of inspection, and may remove any member thereof and fill any vacancy therein.
- (2) Where under subsection (1) the court makes any appointment of a liquidator or a committee of inspection, or where it removes any member of such committee of inspection or fills any vacancy therein, it shall not be necessary to ascertain the wishes of the creditors or contributories, and the provisions of section 194(b) or 206(1) and (2) or 207(6) and (7), as the case may be, shall cease to apply and any action taken under such provisions in respect of any appointment of a liquidator or committee of inspection or any removal therefrom or any filling of any vacancy therein shall cease to have effect.

(Added 22 of 1965 s. 2)

Section:	227C	Informing creditors and contributories and ascertaining their wishes and directions	E.R. 2 of 2012	02/08/2012
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The court may vary the procedure for ascertaining the wishes and directions of creditors and contributories, and for keeping such creditors and contributories informed as to any matter relating to the winding up, and for such purposes the court may-

- (a) order that the Official Receiver or liquidator inform the creditors and contributories of such matters in such manner as it may direct;
- (b) for the purposes of sections 200 and 287 order that the wishes of creditors and contributories be ascertained by the Official Receiver or liquidator in such manner as it may direct;
- (c) for the purposes of section 200 order that the wishes of the creditors and contributories ascertained pursuant to paragraph (b) be reported by the Official Receiver or liquidator to the court, which may thereupon give such directions as it sees fit, and that notwithstanding section 200(2) the liquidator shall not be required to summon any meetings of creditors or contributories:
Provided that nothing in section 227A(4) or in this paragraph shall operate to prevent any person making application to the court under section 200(5);
- (d) order that instead of the same being sent by post as required under section 203(5) the account of the liquidator or a summary thereof be communicated by the Official Receiver to the creditors and contributories in such manner as it may direct.

(Added 22 of 1965 s. 2)

Section:	227D	Compromises and arrangements with creditors	L.N. 163 of 2013	03/03/2014
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- (1) For the purposes of section 670 of the Companies Ordinance (Cap 622), the court may despite subsection (1) of that section order that the wishes of creditors or contributories concerning agreement to or rejection of any compromise or arrangement be ascertained by the liquidator in such manner as it may direct including the conduct of a ballot and the use of voting letters and without holding meetings.
- (2) Where a majority in number and three-fourths in value of the creditors, or a class of creditors, as the case may be, who have proved their debt, or who by virtue of section 227E are deemed for voting purposes to have proved a debt exceeding \$250, agree to any compromise, such agreement shall, for the purposes of section 673 of the Companies Ordinance (Cap 622), have the same effect as if a meeting of the creditors or class of creditors had been summoned under section 670(1) of that Ordinance and a majority in number representing three-fourths in value of the creditors or class of creditors, as the case may be, had been present and voted either in person or by proxy at the meeting and agreed to the compromise. (Amended 81 of 1976 s. 3)
- (3) In the event of the court ordering the holding of any meetings it may order that the provisions of this Ordinance, or of the Companies Ordinance (Cap 622), relating to the holding of meetings be varied, abrogated or added to for the purpose of such meetings.
- (4) In subsection (1) **arrangement** (安排) has the meaning given by section 668(1) of the Companies Ordinance (Cap 622). (Replaced 79 of 1988 s. 6)

(Added 22 of 1965 s. 2. Amended 28 of 2012 ss. 912 & 920)

Section:	227E	Proof of debts	E.R. 2 of 2012	02/08/2012
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- (1) In the case of a bank, any creditor who is a depositor, whether on current, savings, deposit, fixed deposit or other account, shall, unless and until the Official Receiver or liquidator by notice in writing requires him to make a formal proof of debt, be deemed to have proved his debt-
 - (a) for voting purposes, for the net balance to his credit in the books of the bank on all his accounts taken together, at the relevant date,
 - (b) for dividend purposes, for the said balance plus or minus, as the case may be, the net amount of interest accrued due by or to the bank on the said accounts at the relevant date.
- (2) Any debt which is deemed to have been proved by virtue of subsection (1) shall be treated as if a proof thereof had been duly lodged in due time with the Official Receiver or liquidator, and had been admitted for voting and dividend purposes respectively for the said amounts stated in subsection (1).
- (3) In subsection (1), the expression **the relevant date** (有關日期) shall have the meaning assigned to it by section 265(6).
- (4) In subsection (1), the expressions **deposit** (存款) and **depositor** (存款人) have the same meaning as in section 265(6). (Added 11 of 2010 s. 14)

(Added 22 of 1965 s. 2)

Section:	227F	Application of Ordinance to small winding up	E.R. 2 of 2012	02/08/2012
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(iiB) Winding Up by Court by way of Summary Procedure

- (1) Where after the presentation of a winding-up petition-
 - (a) the court is satisfied; or
 - (b) the Official Receiver or the provisional liquidator reports to the court, that the property of the company is not likely to exceed in value \$200000, the court may make an order that the company be wound up in a summary manner, and thereupon the provisions of this Ordinance shall apply subject to the following modifications- (Amended 25 of 1985 s. 4)
 - (i) the Official Receiver or the provisional liquidator, as the case may be, shall be the liquidator but there shall be no meetings of creditors and contributories under section 194 or 206; (Replaced 25 of 1985 s. 4)
 - (ii) there shall be no committee of inspection, and the liquidator may do all things which may be done by a liquidator with the sanction of a committee of inspection;
 - (iii) such other modifications as may be prescribed with a view to saving expense and simplifying procedure.

- (2) The court may, upon the application of the liquidator, at any time before the dissolution of the company rescind an order made under subsection (1) and thereupon the winding up shall proceed as if the order had not been made.

(Added 81 of 1976 s. 4. Amended 46 of 2000 s. 31)

Section:	228	Circumstances in which company may be wound up voluntarily	L.N. 163 of 2013	03/03/2014
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(iii) Voluntary Winding Up

Resolutions for, and commencement of Voluntary Winding Up

- (1) A company may be wound up voluntarily-
- when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; (Replaced 6 of 1984 s. 160. Amended 28 of 2012 ss. 912 & 920)
 - if the company resolves by special resolution that the company be wound up voluntarily;
 - if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up. (Amended 6 of 1984 s. 160)
 - if the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors, deliver to the Registrar a winding-up statement under section 228A(1). (Added 75 of 1993 s. 13. Amended 28 of 2003 s. 82)
- (2) In this Ordinance, the expression ***a resolution for voluntary winding up*** (自動清盤決議) means a resolution passed under subsection (1)(a), (b) or (c). (Amended 75 of 1993 s. 13)

[cf. 1929 c. 23 s. 225 U.K.]

Section:	228A	Special procedure for voluntary winding up of company in case of inability to continue its business	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

241, 242, 243, 244, 245, 246, 247, 248

- (1) The directors of a company or, in the case of a company having more than 2 directors, the majority of the directors, may, if they have formed the opinion that the company cannot by reason of its liabilities continue its business, resolve at a meeting of the directors and deliver to the Registrar a statement in the specified form (the ***winding-up statement***), signed by one of the directors, certifying that a resolution has been passed to the effect that-
- the company cannot by reason of its liabilities continue its business;
 - they consider it necessary that the company be wound up and that the winding up should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance; and
 - meetings of the company and of its creditors will be summoned for a date not later than 28 days after the delivery of the winding-up statement to the Registrar.
- (2) The resolution referred to in subsection (1) and the winding-up statement shall specify the reasons in support of the consideration mentioned in paragraph (b) of that subsection.
- (3) A winding-up statement shall have no effect for the purposes of this Ordinance unless it is delivered to the Registrar for registration within 7 days after the date on which it is made.
- (4) Any director of a company signing a winding-up statement without having reasonable grounds-
- for the opinion that the company cannot by reason of its liabilities continue its business; or
 - to consider that the winding up of the company should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance,
- shall be liable to a fine and imprisonment.
- (5) Where a winding-up statement is delivered to the Registrar-

- (a) the winding up of the company shall commence at the time of the delivery of that statement;
 - (b) the directors shall forthwith appoint a person to be provisional liquidator in the winding up; and
 - (c) the directors shall cause meetings of the company and of its creditors to be summoned for a date not later than 28 days after the delivery of that statement.
- (6) A director who fails to comply with subsection (5)(b) or (c) shall be liable to a fine.
- (7) Where the directors of a company fail to comply with subsection (5)(c), the provisional liquidator appointed under subsection (5)(b) may summon meetings of the company and of its creditors.
- (8) No person shall be appointed as a provisional liquidator under subsection (5)(b) unless-
- (a) he has consented in writing to such appointment; and
 - (b) he is a solicitor, or a certified public accountant under the Professional Accountants Ordinance (Cap 50). (Amended 23 of 2004 s. 56)
- (9) Not later than 14 days after the appointment of a provisional liquidator under subsection (5)(b), the directors shall give notice in the Gazette of-
- (a) the commencement of the winding up of the company by the delivery to the Registrar of the winding-up statement and the date of such delivery; and
 - (b) the appointment of the provisional liquidator and his name and address.
- (10) A provisional liquidator appointed under subsection (5)(b) shall, within 14 days after the date of his appointment, deliver to the Registrar for registration a notice of his appointment in the specified form, which notice shall include the following particulars-
- (a) his name;
 - (b) his address; and
 - (c) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.
- (11) A person appointed as a provisional liquidator under subsection (5)(b) who ceases to act as such shall, within 21 days after the date of his ceasing to act-
- (a) publish in the Gazette a notice of that fact; and
 - (b) deliver to the Registrar for registration a notice of that fact in the specified form.
- (12) If any change occurs in the particulars given in a notice delivered to the Registrar under subsection (10), the provisional liquidator shall, within 14 days after the date of the change, deliver to the Registrar for registration a notice of that change in the specified form, unless he has previously given notice to the Registrar under subsection (11).
- (13) A person who fails to comply with subsection (10), (11) or (12) shall be liable to a fine and, for continued default, to a daily default fine.
- (14) A provisional liquidator appointed under subsection (5)(b) shall-
- (a) unless a liquidator is sooner appointed, hold office until a meeting of the creditors of the company summoned under this section or, if that meeting is adjourned, any adjourned meeting, may allow;
 - (b) take into his custody or under his control all the property and things in action to which the company is or appears to be entitled; and
 - (c) be entitled, out of the funds of the company, to such remuneration as the committee of inspection or, if there is no such committee, the creditors, may fix and to reimbursement of expenses properly incurred by him, but he shall not be liable, and no civil action or other proceedings shall lie against him, in respect of acts properly done by him.
- (15) A provisional liquidator appointed under subsection (5)(b) shall, for the period of his appointment, have the like powers and be subject to the like duties as a liquidator in a creditors' voluntary winding up, and, accordingly, all the powers of the directors shall cease during that period except so far as may be necessary for the purpose of enabling the directors to comply with this section or where the provisional liquidator sanctions the continuance thereof for any other purpose.
- (16) Notwithstanding subsection (15), a provisional liquidator appointed under subsection (5)(b) shall not have power to sell any property to which the company is or appears to be entitled, except where such sale is made in the course of carrying on business in accordance with section 231, unless-
- (a) the property is of a perishable nature or likely to deteriorate if kept; or
 - (b) the court, on the application of the provisional liquidator, orders the sale of the property.
- (17) In relation to every winding up commenced under this section-
- (a) section 241 shall apply to a meeting of the creditors of the company summoned under this section as it applies to a meeting of the creditors of a company summoned under that section except that-

- (i) for the words "at which the resolution for voluntary winding up is to be proposed" in subsection (1) of that section there shall be substituted the words "of the company";
 - (ii) the sending of the notices by post and the advertisement of the meeting of creditors required by subsections (1) and (2) of that section respectively shall occur at least 7 days before the meeting of creditors, and the requirement in subsection (1) of that section as to simultaneous sending of notices shall not apply; and
 - (iii) subsection (5) of that section shall be omitted;
 - (b) subject to paragraph (a), sections 241 to 248 shall apply as they apply in relation to a creditors' voluntary winding up. <* Note - Exp. X-Ref.: Sections 241, 242, 243, 244, 245, 246, 247, 248 *>
- (18) In the case of a private company having only one director, the sole director may-
- (a) pass the resolution referred to in subsection (1) and sign the record of it in the minute book; and
 - (b) make the winding-up statement required under subsection (1).
- (19) In relation to a statutory declaration made under section 228A of this Ordinance before the commencement# of section 83 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of section 228A of this Ordinance in force immediately before that commencement shall continue to have effect as if section 83 of that Ordinance had not been enacted.

(Replaced 28 of 2003 s. 83)

Note:

Commencement date: 13 February 2004.

Section:	229	Notice of resolution to wind up voluntarily	E.R. 2 of 2012	02/08/2012
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- (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette. (Amended 1 of 1949 s. 16; 15 of 1955 s. 6)
- (2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company. (Amended 7 of 1990 s. 2; L.N. 587 of 1995)

[cf. 1929 c. 23 s. 226 U.K.]

Section:	230	Commencement of voluntary winding up	E.R. 2 of 2012	02/08/2012
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Except as provided in section 228A(5)(a), a voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

(Amended 75 of 1993 s. 15; 28 of 2003 s. 84)

[cf. 1929 c. 23 s. 227 U.K.]

Section:	231	Effect of voluntary winding up on business and status of company	E.R. 2 of 2012	02/08/2012
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Consequences of Voluntary Winding Up

In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

[cf. 1929 c. 23 s. 228 U.K.]

Section:	232	Avoidance of transfers, &c., after commencement of voluntary winding up	E.R. 2 of 2012	02/08/2012
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Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Section:	233	Certificate of solvency in case of proposal to wind up voluntarily	E.R. 2 of 2012	02/08/2012
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Certificate of Solvency

(Amended 28 of 2003 s. 85)

- (1) Subject to subsection (1A), where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors, may at a meeting of the directors issue a certificate in the specified form (the *certificate of solvency*), signed by the directors, to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding 12 months from the commencement of the winding up as may be specified in the certificate of solvency. (Amended 30 of 1999 s. 17)
- (1A) A certificate of solvency may be issued by the directors of the company other than at a meeting of the directors if, but only if, before the certificate is issued, a resolution has been passed by the directors authorizing the certificate to be issued. (Replaced 28 of 2003 s. 86)
- (2) A certificate of solvency shall have no effect for the purposes of this Ordinance unless- (Amended 28 of 2003 s. 86)
 - (a) it is issued within the 5 weeks immediately preceding the date of the passing of the resolution for winding up the company or on that date but before the passing of the resolution and is delivered to the Registrar for registration not later than the date of delivery to the Registrar of a copy of the resolution; and (Amended 79 of 1988 s. 7)
 - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the issuing of the certificate.
- (3) Any director of a company signing a certificate of solvency under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the certificate, shall be liable to a fine and imprisonment; and if the company is wound up in pursuance of a resolution passed within the period of 5 weeks after the issuing of the certificate, but its debts are not paid or provided for in full within the period stated in the certificate, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion. (Amended 7 of 1990 s. 2)
- (4) A winding up in the case of which a certificate of solvency has been issued and delivered under this section is in this Ordinance referred to as *a members' voluntary winding up*, and a winding up in the case of which a certificate of solvency has not been issued and delivered as aforesaid is in this Ordinance referred to as *a creditors' voluntary winding up*.
- (5) Notwithstanding subsections (1) and (2), any declaration of solvency made in connexion with a winding up commenced but not completed before the date of commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) shall, if it has been effective for the purposes of this Ordinance before that date, continue to have effect for those purposes on and after that date, and-
 - (a) such winding up shall be deemed to be a members' voluntary winding up within the meaning of this section;
 - (b) subsection (3) shall not apply in relation to any such declaration or winding up.
- (6) In the case of a private company having only one director, the sole director may issue a certificate of solvency by recording the certificate and signing the record of it in the company's minute book; and recording and signing the certificate shall be deemed to satisfy the requirement under subsection (1) that the certificate be issued at a meeting of the directors. (Added 28 of 2003 s. 86)
- (7) Notwithstanding subsections (1) and (2), any declaration of solvency made in connection with a winding up commenced on or after the date of commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) but not completed before the date of commencement** of section 86(6) of the Companies (Amendment) Ordinance 2003 (28 of 2003) shall, if it has been effective for the purposes of this Ordinance before the latter date, continue to have effect for those purposes on and after that date, and-
 - (a) such winding up shall be deemed to be a members' voluntary winding up within the meaning of this section; and
 - (b) subsection (3) shall apply in relation to any such declaration or winding up as if the declaration were a certificate of solvency. (Added 28 of 2003 s. 86)

(Replaced 6 of 1984 s. 162. Amended 28 of 2003 s. 86)
[cf. 1948 c. 38 s. 283 U.K.]

Note:

* **Commencement date: 31 August 1984.**

** **Commencement date: 13 February 2004.**

Section:	234	Provisions applicable to members' winding up	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

235, 235A, 236, 237, 237A, 238, 239, 239A

Provisions applicable to a Members' Voluntary Winding Up

The provisions contained in sections 235 to 239A shall apply in relation to a members' voluntary winding up. <* Note - Exp. X-Ref.: Sections 235, 235A, 236, 237, 237A, 238, 239, 239A *>

(Amended 6 of 1984 s. 163)
[cf. 1929 c. 23 s. 231 U.K.]

Section:	235	Power of company to appoint and fix remuneration of liquidators	E.R. 2 of 2012	02/08/2012
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- (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.
- (2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

[cf. 1929 c. 23 s. 232 U.K.]

Section:	235A	Power to remove liquidator	E.R. 2 of 2012	02/08/2012
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- (1) The company may by special resolution remove a liquidator from office at a general meeting of which notice specifying the intention to propose such resolution has been duly given to the creditors and the liquidator.
- (2) The court may, on the application of any creditor or contributory, order that a liquidator whom it is proposed to remove from office under this section shall not be so removed.
- (3) A general meeting for the purpose of this section may be convened by any contributory.

(Added 6 of 1984 s. 164)

Section:	236	Power to fill vacancy in office of liquidators	L.N. 163 of 2013	03/03/2014
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- (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner provided by this Ordinance or the Companies Ordinance (Cap 622) or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court. (Amended 28 of 2012 ss. 912 & 920)

[cf. 1929 c. 23 s. 233 U.K.]

Section:	237	Power of liquidator to accept shares, &c. as consideration for sale of property of company	E.R. 2 of 2012	02/08/2012
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- (1) Where a company is proposed to be, or is in course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Ordinance or not (in this section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution

of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

- (2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.
- (3) If any member of the transferor company, whether he voted in favour of the special resolution or not, expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration. (Amended 25 of 1998 s. 2)
- (4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.
- (5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by the court, the special resolution shall not be valid unless sanctioned by the court.
- (6) (Repealed 25 of 1998 s. 2)

(Amended 6 of 1984 s. 165)
[cf. 1929 c. 23 s. 234 U.K.]

Section:	237A	Duty of liquidator to call creditors' meeting in case of insolvency	E.R. 2 of 2012	02/08/2012
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- (1) If, in the case of a winding up commenced after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the certificate or declaration under section 233, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company. (Amended 28 of 2003 s. 87)
- (2) The creditors may, at a meeting called by the liquidator under this section, appoint another liquidator in his place and fix the remuneration of the liquidator so appointed, and may, if they think fit, appoint a committee of inspection.
- (3) If the liquidator fails to comply with subsection (1), he shall be liable to a fine. (Amended 7 of 1990 s. 2)
(Added 6 of 1984 s. 166)
[cf. 1948 c. 38 s. 288 U.K.]

Note:

* **Commencement date: 31 August 1984.**

Section:	238	Duty of liquidator to call general meeting at end of each year	E.R. 2 of 2012	02/08/2012
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- (1) Subject to section 239A, in the event of the winding up continuing for more than 1 year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Official Receiver may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.
- (2) If the liquidator fails to comply with this section, he shall be liable to a fine. (Amended 22 of 1950 Schedule; 7 of 1990 s. 2)

(Amended 6 of 1984 s. 167)
[cf. 1929 c. 23 s. 235 U.K.]

Section:	239	Final meeting and dissolution	E.R. 2 of 2012	02/08/2012
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- (1) Subject to section 239A, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.
- (2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published 1 month at least before the meeting.
- (3) Within 1 week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine and, for continued default, to a daily default fine:
 Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of the subsection as to the making of the return shall be deemed to have been complied with.
- (4) The Registrar on receiving the account and either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 3 months from the registration of the return the company shall be dissolved:
 Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.
- (5) It shall be the duty of the person on whose application an order of the court under this section is made, within 7 days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine and, for continued default, to a daily default fine.
- (6) If the liquidator fails to call a general meeting of the company as required by this section, he shall be liable to a fine. (Added 6 of 1984 s. 168)

(Amended 6 of 1984 s. 168; 7 of 1990 s. 2)
 [cf. 1929 c. 23 s. 236 U.K.]

Section:	239A	Alternative provisions as to annual and final meetings in case of insolvency	E.R. 2 of 2012	02/08/2012
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Where section 237A has effect, sections 247 and 248 shall apply to the winding up to the exclusion of sections 238 and 239, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:
 Provided that the liquidator shall not be required to summon a meeting of creditors under section 247 at the end of the first year from the commencement of the winding up, unless the meeting held under section 237A is held more than 3 months before the end of that year.

(Added 6 of 1984 s. 169)
 [cf. 1948 c. 38 s. 291 U.K.]

Section:	240	Provisions applicable to creditors' winding up	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

241, 242, 243, 244, 245, 246, 247, 248

Provisions applicable to a Creditors' Voluntary Winding Up

The provisions contained in sections 241 to 248 shall apply in relation to a creditors' voluntary winding up. <* Note - Exp. X-Ref.: Sections 241, 242, 243, 244, 245, 246, 247, 248 *>

[cf. 1929 c. 23 s. 237 U.K.]

Section:	241	Meeting of creditors	E.R. 2 of 2012	02/08/2012
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- (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next

following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

- (2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in, respectively, an English language newspaper and a Chinese language newspaper circulating in Hong Kong. (Replaced 6 of 1984 s. 170)
- (3) The directors of the company shall-
 - (a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and
 - (b) appoint one of their number to preside at the said meeting.
- (4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.
- (5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.
- (6) If default is made-
 - (a) by the company in complying with subsections (1) and (2);
 - (b) by the directors of the company in complying with subsection (3);
 - (c) by any director of the company in complying with subsection (4),
 the company, directors or director, as the case may be, shall be liable to a fine, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty. (Amended 22 of 1950 Schedule; 6 of 1984 s. 170; 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 238 U.K.]

Section:	242	Appointment of liquidator	E.R. 2 of 2012	02/08/2012
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The creditors and the company at their respective meetings mentioned in section 241 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

[cf. 1929 c. 23 s. 239 U.K.]

Section:	243	Appointment of committee of inspection	E.R. 2 of 2012	02/08/2012
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- (1) The creditors at the meeting to be held in pursuance of section 241 or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding 5 in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

- (2) Subject to the provisions of this section and to general rules, section 207 (except subsection (1)) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

[cf. 1929 c. 23 s. 240 U.K.]

Section:	244	Fixing of liquidators' remuneration and cesser of directors' powers	E.R. 2 of 2012	02/08/2012
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- (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.
- (2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.
[cf. 1929 c.23 s. 241 U.K.]

Section:	245	Power to fill vacancy in office of liquidator	E.R. 2 of 2012	02/08/2012
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If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy.
[cf. 1929 c. 23 s. 242 U.K.]

Section:	246	Application of section 237 to a creditors' voluntary winding up	E.R. 2 of 2012	02/08/2012
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Section 237 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the court or of the committee of inspection.
[cf. 1929 c. 23 s. 243 U.K.]

Section:	247	Duty of liquidator to call meetings of company and of creditors at end of each year	E.R. 2 of 2012	02/08/2012
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- (1) In the event of the winding up continuing for more than 1 year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Official Receiver may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.
- (2) If the liquidator fails to comply with this section, he shall be liable to a fine. (Amended 22 of 1950 Schedule; 7 of 1990 s. 2)
(Amended 6 of 1984 s. 171)
[cf. 1929 c. 23 s. 244 U.K.]

Section:	248	Final meeting and dissolution	E.R. 2 of 2012	02/08/2012
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- (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings, and giving any explanation thereof.
- (2) Each such meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published 1 month at least before the meeting.
- (3) Within 1 week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a fine and, for continued default, to a daily default fine:
Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

- (4) The Registrar on receiving the account and in respect of each such meeting either of the returns hereinbefore mentioned shall forthwith register them, and on the expiration of 3 months from the registration thereof the company shall be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

- (5) It shall be the duty of the person on whose application an order of the court under this section is made, within 7 days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if that person fails so to do he shall be liable to a fine and, for continued default, to a daily default fine.
- (6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be liable to a fine. (Added 6 of 1984 s. 172)

(Amended 6 of 1984 s. 172; 7 of 1990 s. 2)
[cf. 1929 c. 23 s. 245 U.K.]

Section:	249	Provisions applicable to every voluntary winding up	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

250, 251, 252, 253, 254, 255, 255A, 256, 257

Provisions applicable to every Voluntary Winding Up

The provisions contained in sections 250 to 257 shall apply to every voluntary winding up. < * Note - Exp. X-Ref.: Sections 250, 251, 252, 253, 254, 255, 255A, 256, 257 * >

(Amended 6 of 1984 s. 173)
[cf. 1929 c. 23 s. 246 U.K.]

Section:	250	Distribution of property of company	E.R. 2 of 2012	02/08/2012
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Subject to the provisions of this Ordinance as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

[cf. 1929 c. 23 s. 247 U.K.]

Section:	251	Powers and duties of liquidator in voluntary winding up	E.R. 2 of 2012	02/08/2012
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- (1) The liquidator may-
- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of the court or the committee of inspection or (if there is no such committee) a meeting of the creditors, exercise any of the powers given by paragraphs (d), (e) and (f) of section 199(1) to a liquidator in a winding up by the court; (Replaced 6 of 1984 s. 174)
 - (b) without sanction, exercise any of the other powers by this Ordinance given to the liquidator in a winding up by the court;
 - (c) exercise the power of the court under this Ordinance of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
 - (d) exercise the power of the court of making calls;
 - (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose he may think fit. (Amended 6 of 1984 s. 174)
- (2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (3) When several liquidators are appointed, any power given by this Ordinance may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than 2.

[cf. 1929 c. 23 s. 248 U.K.]

Section:	252	Court may appoint and remove liquidator in voluntary winding up	E.R. 2 of 2012	02/08/2012
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- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

[cf. 1929 c. 23 s. 249 U.K.]

Section:	253	Notice by liquidator of his appointment or ceasing to act	E.R. 2 of 2012	02/08/2012
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- (1) The liquidator shall, within 21 days after the date of his appointment-
 - (a) publish in the Gazette a notice of his appointment; and
 - (b) deliver to the Registrar for registration a notice of his appointment in the specified form, which notice shall include the following particulars-
 - (i) his name;
 - (ii) his address; and
 - (iii) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.
- (2) A person appointed as a liquidator who ceases to act as such shall, within 21 days after the date of his ceasing to act-
 - (a) publish in the Gazette a notice of that fact; and
 - (b) deliver to the Registrar for registration a notice of that fact in the specified form.
- (3) If any change occurs in the particulars given in a notice delivered to the Registrar under subsection (1)(b), the liquidator shall, within 14 days after the date of the change, deliver to the Registrar for registration a notice of that change in the specified form, unless he has previously given notice to the Registrar under subsection (2)(b).
- (4) A person who fails to comply with subsection (1), (2) or (3) shall be liable to a fine and, for continued default, to a daily default fine.
- (5) This section does not apply to a provisional liquidator appointed under section 228A(5)(b).

(Replaced 28 of 2003 s. 88)

Section:	254	Arrangement, when binding on creditors	E.R. 2 of 2012	02/08/2012
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- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors. (Amended 6 of 1984 s. 176)
- (2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

[cf. 1929 c. 23 s. 251 U.K.]

Section:	255	Power to apply to court to have questions determined or powers exercised	E.R. 2 of 2012	02/08/2012
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- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.
- (3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be delivered by the company, or otherwise as may be prescribed, to the Registrar for registration. (Added 6 of 1984 s. 177)

[cf. 1929 c. 23 s. 252 U.K.]

Section:	255A	Audit of liquidator's accounts in voluntary winding up	E.R. 2 of 2012	02/08/2012
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- (1) The liquidator shall keep an account of his receipts and payments as liquidator and, subject to subsection (2), shall cause the account to be audited.
- (2) An audit under this section shall not be required if the committee of inspection or, as the case may be, the company by ordinary resolution so determines.

(Added 6 of 1984 s. 178)

Section:	256	Costs of voluntary winding up	E.R. 2 of 2012	02/08/2012
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All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

[cf. 1929 c. 23 s. 254 U.K.]

Section:	257	Saving for rights of creditors and contributories	E.R. 2 of 2012	02/08/2012
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The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

[cf. 1929 c. 23 s. 255 U.K.]

Section:	258	(Repealed 6 of 1984 s. 179)		30/06/1997
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(iv) (Repealed 6 of 1984 s. 179)

Section:	259	(Repealed 6 of 1984 s. 179)		30/06/1997
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Section:	260	(Repealed 6 of 1984 s. 179)		30/06/1997
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Section:	261	(Repealed 6 of 1984 s. 179)		30/06/1997
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Section:	262	(Repealed 6 of 1984 s. 179)		30/06/1997
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Section:	263	Debts of all descriptions to be proved	E.R. 2 of 2012	02/08/2012
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(v) Provisions Applicable to Every Mode of Winding Up

Proof and Ranking of Claims

In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

[cf. 1929 c. 23 s. 261 U.K.]

Section:	264	Application of bankruptcy rules in winding up of insolvent companies	E.R. 2 of 2012	02/08/2012
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In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

(Amended 6 of 1984 s. 180)
[cf. 1929 c. 23 s. 262 U.K.]

Section:	264A	Interest on debts	E.R. 2 of 2012	02/08/2012
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- (1) In the winding up of a company, not being an insolvent company, interest is payable in accordance with this section on the taxed costs of the petition and any debt proved in the winding up, including so much of any such debt as represents interest on the remainder. (Amended 46 of 2000 s. 33)
- (2) Any surplus remaining after the payment of debts proved in a winding up referred to in subsection (1) shall, before being applied for any other purpose, be applied in paying interest on the taxed costs of the petition and those debts in respect of the period during which the taxed costs of the petition and the debt have been outstanding, in the case of- (Amended 46 of 2000 s. 33)
 - (a) a winding up by court-
 - (i) where the company has by special resolution resolved that the company be wound up, since the date of the resolution; and
 - (ii) in any other case, since the date of the winding-up order; and
 - (b) a voluntary winding up, since the commencement of the winding up (which must be construed having regard to section 228A(5)(a) or 230, as may be appropriate). (Amended 28 of 2003 s. 89)
- (3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt is whichever is the greater of the following-
 - (a) the rate specified under section 49(1)(b) of the High Court Ordinance (Cap 4); and (Amended 25 of 1998 s. 2)
 - (b) the rate applicable to that debt apart from the winding up.

(Added 3 of 1997 s. 43)
[cf. 1986 c. 45 s. 189 U.K.]

Section:	264B	Extortionate credit transactions	E.R. 2 of 2012	02/08/2012
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- (1) This section applies, in relation to a company being wound up where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.
- (2) The court may, on the application of the liquidator, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending on, in the case of-
 - (a) a winding up by court-
 - (i) where the company has by special resolution resolved that the company be wound up, the date of the resolution; and
 - (ii) in any other case, the date of the winding-up order; and
 - (b) a voluntary winding up, the commencement of the winding up (which must be construed having regard to section 228A(5)(a) or 230, as may be appropriate). (Amended 28 of 2003 s. 90)
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit-
 - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or
 - (b) it otherwise grossly contravenes ordinary principles of fair dealing, and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the

court thinks fit, that is to say-

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) provision requiring any person who is or was a party to the transaction to pay to the liquidator any sums paid to that person, by virtue of the transaction, by the company;
- (d) provision requiring any person to surrender to the liquidator any property held by him as security for the purposes of the transaction; or
- (e) provision directing accounts to be taken between any persons.

(Added 3 of 1997 s. 43)
[cf. 1986 c. 45 s. 244 U.K.]

Section:	265	Preferential payments	E.R. 2 of 2012	02/08/2012
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- (1) In a winding up there shall be paid in priority to all other debts-
 - (a) (Repealed 6 of 1984 s. 181)
 - (b) any-
 - (i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap 380) to any clerk or servant in respect of wages or salary or both in respect of services rendered to the company if such payment was made during a period of 4 months before the commencement of the winding up; and (Amended 48 of 1987 s. 8)
 - (ii) wages and salary (including commission provided that the amount thereof is fixed or ascertainable at the relevant date) of any clerk or servant in respect of services rendered to the company during the relevant period not exceeding, together with any payment under sub-paragraph (i), \$3000; (Replaced 12 of 1985 s. 29)
 - (c) any-
 - (i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap 380) to any labourer or workman in respect of wages, whether payable for time or for piece work, in respect of services rendered to the company if such payment was made during a period of 4 months before the commencement of the winding up; and (Amended 48 of 1987 s. 8)
 - (ii) wages of any labourer or workman, whether payable for time or for piece work, in respect of services rendered to the company during the relevant period not exceeding, together with any payment under sub-paragraph (i), \$3000; (Replaced 12 of 1985 s. 29)
 - (ca) any severance payment payable to an employee under the Employment Ordinance (Cap 57), not exceeding in respect of each employee \$6000; (Added 55 of 1974 s. 2)
 - (caa) any long service payment payable to an employee under the Employment Ordinance (Cap 57), not exceeding in respect of each employee \$8000; (Added 77 of 1985 s. 2)
 - (cb) any amount due in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap 282) accrued before the relevant date and, where the compensation is a periodical payment, the amount due in respect thereof shall be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed on an application being made for that purpose under the Employees' Compensation Ordinance (Cap 282), but this paragraph shall not apply to any amount due in respect of compensation or liability for compensation where the company has entered into a contract with a person carrying on accident insurance business in Hong Kong in respect of its liability under the Employees' Compensation Ordinance (Cap 282) for personal injury by accident to the employee to whom the compensation or liability for compensation is due or where the company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; (Added 4 of 1977 s. 2. Amended 6 of 1984 s. 259)
 - (cc) any wages in lieu of notice payable to an employee under the Employment Ordinance (Cap 57), not exceeding in respect of each employee one month's wages or \$2000 whichever is the lesser; (Added 4 of 1977 s. 2)
 - (cd) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution; (Added 6 of 1984 s. 181)

- (ce) any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance (Cap 365) representing an amount due by the company in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap 282) accrued before the relevant date; (Added 54 of 1991 s. 47)
- (cf) any amount of unpaid contribution or any amount deemed to be unpaid contribution calculated in accordance with rules made under section 73(1)(n) of the Occupational Retirement Schemes Ordinance (Cap 426) which should have been paid by the company being wound up in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the winding up:
Provided that where such amount exceeds \$50000 in respect of an employee, 50% of such part of the amount that exceeds \$50000 shall not be paid in priority to all other debts under this subsection; (Added 88 of 1992 s. 84)
- (cg) (without prejudice to any right or liability under a trust) any amount of salaries deducted by the company being wound up from its employees' salaries for the purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426) which have not been paid into such funds; (Added 88 of 1992 s. 84)
- (ch) any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes Ordinance (Cap 485) which should have been paid by the company being wound up in accordance with the provisions of that Ordinance before the commencement of the winding up:
Provided that where such amount exceeds \$50000 in respect of an employee, 50% of such part of the amount that exceeds \$50000 shall not be paid in priority to all other debts under this subsection; (Added 80 of 1995 s. 49)
- (ci) any amount deducted by the company being wound up from the relevant income of its relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap 485) which have not been paid to that approved trustee; (Added 80 of 1995 s. 49)
- (cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 80 of 1995 s. 49)
- (d) all statutory debts due from the company to the Government at the relevant date and which became due and payable within 12 months next before that date. (Replaced 6 of 1984 s. 181. Amended 23 of 1999 s. 3)
- (da) (Repealed 30 of 1999 s. 18)⁺⁺
- (db) where the company being wound up is or was a bank and, at the commencement of the winding up, held deposits, to each depositor- (Amended 7 of 2004 s. 55)
 - (i) in respect of the deposits, or portion thereof, that the depositor holds in his own right, the aggregate amount so held on deposit, up to the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap 581), regardless of the number of deposits;
 - (ii) in respect of the deposits, or portion thereof, that the depositor holds as a bare trustee for each of the beneficiaries, the aggregate amount so held on deposit, up to, subject to subsection (5J), the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap 581), regardless of the number of deposits so held for the beneficiary;
 - (iii) in respect of the deposits, or portion thereof, that the depositor holds in a client account for each of the clients, the aggregate amount so held on deposit, up to, subject to subsection (5J), the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap 581), regardless of the number of deposits so held for the client; and
 - (iv) in respect of the deposits, or portion thereof, that the depositor holds as a trustee (but not a bare trustee) under each of the trusts, the aggregate amount so held on deposit, up to the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(2) of the Deposit Protection Scheme Ordinance (Cap 581), regardless of the number of deposits so held under the trust; (Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55; 11 of 2010 s. 14)
- (e) where the company being wound up is an insurer, any sum payable to a person in respect of any claim

(other than a claim for a refund of premium) made under or in accordance with a contract of insurance (but not a contract of reinsurance) effected by the insurer as part of its general business carried on in or from Hong Kong, unless-

- (i) such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place; or
 - (ii) the person to whom the sum is payable is entitled with respect to the claim to claim compensation under any scheme designed to secure compensation to persons in circumstances where the insurer becomes insolvent; (Added 79 of 1988 s. 8)
- (ea) where the company being wound up is an insurer, any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance (Cap 365) representing a sum payable by the company to a person in respect of any claim (other than a claim for refund of premium) made under or in accordance with a contract of insurance issued for the purposes of Part IV of the Employees' Compensation Ordinance (Cap 282) effected by the insurer as part of its general business carried on in or from Hong Kong; unless such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place; (Added 54 of 1991 s. 47)
- (f) where the company being wound up is an insurer, any sum payable (after offsetting the amount of any sums owing from the claimant) to a person in respect of any claim (other than a claim for a refund of premium) made under or in accordance with a contract of reinsurance effected by the insurer, as reinsurer, as part of its general business carried on in or from Hong Kong, unless such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place. (Added 79 of 1988 s. 8)
- (1A) Where the relevant date is on or after 1 June 1970 but before 1 April 1977, the sum of \$6000 shall be deemed to be substituted in each case for the sums of \$3000 referred to in paragraphs (b) and (c) respectively of subsection (1). (Added 41 of 1970 s. 2. Amended 4 of 1977 s. 2)
- (1B) Where the relevant date is on or after 1 April 1977, the sum of \$8000 shall be deemed to be substituted in each case for the sums of \$3000 referred to in paragraphs (b) and (c) respectively, and for the sum of \$6000 referred to in paragraph (ca), of subsection (1). (Added 4 of 1977 s. 2)
- (2) Subject to subsection (1)(b) and (c), where any payment on account of wages or salary, or severance payment, or long service payment or wages in lieu of notice payable under the Employment Ordinance (Cap 57), or accrued holiday remuneration, has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made. (Amended 6 of 1984 s. 181; 12 of 1985 s. 29(3); 77 of 1985 s. 2)
- (3) The debts specified in subsection (1)(b), (c), (ca), (caa), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci) and (cj)- (Amended 55 of 1974 s. 2; 4 of 1977 s. 2; 6 of 1984 s. 181; 77 of 1985 s. 2; 54 of 1991 s. 47; 88 of 1992 s. 84; 80 of 1995 s. 49)
- (a) shall have priority over the debts specified in subsection (1)(d);
 - (b) shall rank equally among themselves; and
 - (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (Replaced 41 of 1970 s. 2)
- (3A) The debts specified in subsection (1)(d) shall have priority over the debts specified in subsection (1)(da), (db), (e), (ea) and (f). (Added 79 of 1988 s. 8. Amended 54 of 1991 s. 47; 10 of 1993 s. 2; 83 of 1995 s. 16)
- (3AAA) The debts specified in subsection (1)(da) shall have priority over the debts specified in subsection (1)(db), (e), (ea) and (f). (Added 10 of 1993 s. 2. Amended 83 of 1995 s. 16)
- (3AAAA) The debts specified in subsection (1)(db)-

- (a) shall have priority over the debts in subsection (1)(e), (ea) and (f);
 - (b) shall rank equally among themselves; and
 - (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (Added 83 of 1995 s. 16)
- (3AA) The debts specified in subsection (1)(e) and (ea)-
- (a) shall have priority over the debts specified in subsection (1)(f);
 - (b) shall rank equally among themselves; and
 - (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (Added 79 of 1988 s. 8. Amended 54 of 1991 s. 47)
- (3AB) The debts specified in subsection (1)(f)-
- (a) shall rank equally among themselves; and
 - (b) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. (Added 79 of 1988 s. 8)
- (3B) The debts specified in subsection (1) shall, so far as the assets of the company available for payment of general creditors are insufficient to meet those debts, have priority over the claims of holders of debentures under any charge created as a floating charge by the company, and shall be paid accordingly out of any property comprised in or subject to the charge. (Added 41 of 1970 s. 2. Amended 10 of 1987 s. 9)
- (4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.
- (5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof. (Amended 41 of 1970 s. 2)
- (5A) Any money paid under a charge under subsection (5) shall be a debt due from the company to the landlord or other person having distrained, and such debt shall be discharged so far as the assets are sufficient to meet it after payment of the debts specified in subsection (1) but before payment of the other debts proved in the winding up. (Added 41 of 1970 s. 2)
- (5B) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the court may, on the application of the Official Receiver or the liquidator or any such creditor, make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing. (Added 6 of 1984 s. 181)
- (5C) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period. (Added 6 of 1984 s. 181)
- (5D) The deposits given priority under subsection (1)(db) do not include the following-
- (a) terms deposits where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
 - (b) deposits made after the date of publication of a notice in the Gazette under section 28(2)(b) of the Banking Ordinance (Cap 155) that the company has been removed from the register and has ceased to be a bank. (Added 83 of 1995 s. 16)
- (5E) If-
- (a) an arrangement has been entered into or carried out on or after the specified date in relation to a deposit with the company except where the arrangement is one in pursuance of a legally enforceable obligation incurred prior to that date;
 - (b) the arrangement has, or would have had but for this subsection, the effect of enabling a person to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled; and
 - (c) it would be concluded, having regard to-
 - (i) the manner in which, and the circumstances under which, the arrangement was entered into or carried out;
 - (ii) the form and substance of the arrangement; and
 - (iii) the result in relation to the operation of this Ordinance that, but for this subsection, would have been achieved by the arrangement,

that the arrangement was entered into or carried out for the sole or dominant purpose of enabling the person, either alone or in conjunction with other persons, to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled,

the priority given under subsection (1)(db) shall apply as if the arrangement or any part thereof had not been entered into or carried out. (Replaced 7 of 2004 s. 55)

- (5F) Deposits given priority under subsection (1)(db) do not include-
- (a) a deposit held for the account of the Exchange Fund established by the Exchange Fund Ordinance (Cap 66);
 - (b) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
 - (c) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor's client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; and
 - (d) a deposit held by a depositor as a trustee (but not a bare trustee) for an excluded person only. (Replaced 7 of 2004 s. 55)
- (5G) For the purposes of subsection (5F)(b) and (c), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator. (Added 7 of 2004 s. 55)
- (5H) For the purposes of paragraph (db) of subsection (1)-
- (a) if the depositor referred to in subparagraph (i) of that paragraph consists of 2 or more persons-
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator;
 - (b) if the beneficiary or client referred to in subparagraph (ii) or (iii) of that paragraph consists of 2 or more persons-
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator; and
 - (c) if the depositor referred to in subparagraph (iv) of that paragraph consists of 2 or more persons, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the trustees. (Added 7 of 2004 s. 55)
- (5I) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee (whether a bare trustee or not) under a trust (whether a bare trust or not), the deposit or portion is, for the purposes of this section, taken as being held by the depositor for the client and not as such trustee. (Added 7 of 2004 s. 55)
- (5J) If-
- (a) a person has more than one of the following capacities-
 - (i) a depositor holding one or more deposits, or portion thereof, in his own right;
 - (ii) a beneficiary for whom one or more deposits, or portion thereof, is or are held by a depositor as a bare trustee;
 - (iii) a client for whom one or more deposits, or portion thereof, is or are held by a depositor in a client account; and
 - (b) the aggregate of the amount that shall be paid in priority under subsection (1)(db)(i), (ii) or (iii) in respect of the relevant deposits or portions would, but for this subsection, have exceeded the limit on the total amount of compensation to which a person is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap 581),
- the amount that shall be paid in priority under subsection (1)(db)(ii) or (iii) shall abate in equal proportions

among themselves so that the aggregate referred to in paragraph (b) shall be that limit prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap 581). (Added 7 of 2004 s. 55. Amended 11 of 2010 s. 14)

(6) In this section-

accrued holiday remuneration (累算的假日薪酬) includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Ordinance), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday, and, without limitation, includes any pay for untaken statutory holidays and pay for untaken annual leave; (Amended 7 of 2012 s. 11)

arrangement (安排) includes an arrangement, transaction, operation or scheme whether or not such arrangement, transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings; (Added 7 of 2004 s. 55)

bank (銀行) has the same meaning as in the Banking Ordinance (Cap 155); (Added 83 of 1995 s. 16)

bare trustee (被動受託人) has the same meaning as in the Deposit Protection Scheme Ordinance (Cap 581); (Added 7 of 2004 s. 55)

chief executive (行政總裁) has the same meaning as in the Banking Ordinance (Cap 155); (Added 7 of 2004 s. 55)

client account (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account; (Added 7 of 2004 s. 55)

controller (控權人) has the same meaning as in the Banking Ordinance (Cap 155); (Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55)

deposit (存款) and **depositor** (存款人) have the same meaning as in the Deposit Protection Scheme Ordinance (Cap 581); (Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55; 11 of 2010 s. 14)

Employees Compensation Assistance Fund (僱員補償援助基金) means the fund established by section 7 of the Employees Compensation Assistance Ordinance (Cap 365); (Added 54 of 1991 s. 47)

excluded person (豁除人士), in relation to a deposit maintained with the company being wound up, means-

- (a) a related company of the company;
- (b) an officer of the company being wound up or its related company on-
 - (i) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap 155) is appointed in respect of the company being wound up under section 52 of that Ordinance; or
 - (ii) the date on which the petition for the winding up of the company being wound up is presented, whichever is the earlier;
- (c) a multilateral development bank as defined in section 2(1) of the Banking Ordinance (Cap 155); (Amended 19 of 2005 s. 7)
- (d) an authorized financial institution; or
- (e) a foreign bank; (Added 7 of 2004 s. 55)

foreign bank (外地銀行) means a company that-

- (a) is incorporated outside Hong Kong;
- (b) is not an authorized financial institution; and
- (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place; (Added 7 of 2004 s. 55)

general business (一般業務) means insurance business not being long term business as defined in section 2(1) of the Insurance Companies Ordinance (Cap 41); (Added 79 of 1988 s. 8)

insurer (保險人) means a person carrying on insurance business; (Added 79 of 1988 s. 8)

manager (經理) has the same meaning as in the Banking Ordinance (Cap 155); (Added 83 of 1995 s. 16)

non-excluded person (非豁除人士) means a person who is not an excluded person; (Added 7 of 2004 s. 55)

officer (人員), in relation to a company that is an authorized financial institution, means-

- (a) a director of the company;
- (b) a chief executive of the company;

- (c) a controller of the company; or
- (d) a manager of the company; (Added 7 of 2004 s. 55)

pay for untaken annual leave (未放年假薪酬), in relation to any person, means any sum which, by virtue either of the person's contract of employment or of any enactment (including any order made or direction given under any Ordinance), is payable-

- (a) in respect of annual leave to which the person has become entitled to be allowed but which the person has not taken; or
- (b) on account of the remuneration in respect of annual leave that would have become payable to the person if the person's employment had continued until the person became entitled to be allowed the annual leave, and, without limitation, includes any sum payable under section 41D of the Employment Ordinance (Cap 57); (Added 7 of 2012 s. 11)

pay for untaken statutory holidays (未放法定假日薪酬) means any sum payable under the Employment Ordinance (Cap 57) or a contract of employment in respect of a statutory holiday (within the meaning of that Ordinance) that has not been taken as a holiday (within the meaning of that Ordinance); (Added 7 of 2012 s. 11)

Protection of Wages on Insolvency Fund (破產欠薪保障基金) means the fund deemed to be established and continued in existence under section 6 of the Protection of Wages on Insolvency Ordinance (Cap 380); (Added 12 of 1985 s. 29(3))

related company (關連公司), in relation to a company, means-

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of the holding company; (Added 7 of 2004 s. 55)

specified date (指明日期), in relation to a company, means-

- (a) the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap 155) is appointed in respect of the company under section 52 of that Ordinance; or
- (b) the date on which the petition for the winding up of the company is presented, whichever is the earlier; (Added 7 of 2004 s. 55)

statutory debt (法定債項) means a debt the liability for which and the amount of which are determined by or under any provision in any Ordinance; (Amended 23 of 1999 s. 3)

the relevant date (有關日期) means-

- (a) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
- (b) in any case where paragraph (a) does not apply, the date of the commencement of the winding up;

the relevant period (有關期間) means-

- (a) in a case where a company is being wound up by the court and the relevant date in the case of that company is a date other than the date of the commencement of the winding up, the period-
 - (i) beginning 4 months next before the commencement of the winding up and ending on the relevant date; or
 - (ii) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap 380) of any clerk or servant or labourer or workman, as the case may be, who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, (Replaced 68 of 1996 s. 5) whichever is the earlier;
- (b) in any case where paragraph (a) does not apply, the period-
 - (i) of 4 months next before the relevant date; or
 - (ii) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap 380) of any clerk or servant or labourer or workman, as the case may be, who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, (Replaced 68 of 1996 s. 5) whichever is the earlier; (Replaced 48 of 1987 s. 8)

wages (工資) includes, in relation to any person, any sum which, by virtue of his contract of employment, is payable to him as a Lunar New Year bonus, but does not include any accrued holiday remuneration. (Replaced 6 of 1984 s. 181)

- (7) The Companies (Amendment) Ordinance 1984 (6 of 1984) shall not apply in the case of a winding up where the relevant date occurred before the commencement* of that Ordinance, and, in such a case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. (Added 6 of 1984 s. 181)
- (8) The Fourth Schedule to the Protection of Wages on Insolvency Ordinance 1985 (12 of 1985) shall not apply in the case of a winding up where the date of the commencement of the winding up occurred before the commencement+ of that Ordinance, and, in such case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force (Added 12 of 1985 s. 29(3))
- (9) The Companies (Amendment) (No. 3) Ordinance 1988 (79 of 1988) shall not apply in the case of a winding up where the date of the commencement of the winding up occurred before the commencement of that Ordinance, and, in such a case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. (Added 79 of 1988 s. 8)
- (10) Section 5(a) of the Protection of Wages on Insolvency (Amendment) Ordinance 1996 (68 of 1996) (*the amending Ordinance*) shall not apply in the case of a winding up to which an application under section 15(1) of the Protection of Wages on Insolvency Ordinance (Cap 380) relates where such application is made before the commencement** of the amending Ordinance, and in such a case, the provisions relating to preferential payments which would have applied if the amending Ordinance had not been enacted shall be deemed to remain in full force. (Added 68 of 1996 s. 5)
- (11) In the case of a winding up where the relevant date has occurred before the commencement*** of the Schedule to the Deposit Protection Scheme (Amendment) Ordinance 2010 (11 of 2010), that Schedule applies in relation to that winding up if the specified event within the meaning of section 22(1) of the Deposit Protection Scheme Ordinance (Cap 581) occurs on or after the commencement of that Schedule. (Added 11 of 2010 s. 14)
(Amended E.R. 2 of 2012)
[cf. 1929 c. 23 s. 264 U.K.]

Note:

* **Commencement date: 31 August 1984.**

+ **Commencement date: 19 April 1985.**

** **Commencement date: 6 December 1996.**

*** **Commencement date: 1 January 2011.**

++ **Sections 265(1)(da) was repealed by the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 43 of that Ordinance provides as follows-**

"43. Savings

Despite the repeal of sections 265(1)(da), 290A, 290B and 290E of the principal Ordinance, those sections are to continue to have effect in relation to a company that has been struck off under section 290A of the principal Ordinance as if those sections had not been repealed."

Section:	266	Fraudulent preference	E.R. 2 of 2012	02/08/2012
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Effect of Winding Up on antecedent and other Transactions

- (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding up which, had it been made or done by or against an individual within 6 months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly: Provided that, in relation to things made or done before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), this subsection shall have effect with the substitution, for references to 6 months, of references to 3 months.
- (2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

(Replaced 6 of 1984 s. 182)
[cf. 1948 c. 38 s. 320 U.K.]

Note:*** Commencement date: 31 August 1984.**

Section:	266A	Liabilities and rights of certain fraudulently preferred persons	E.R. 2 of 2012	02/08/2012
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- (1) Where anything made or done after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) is void under section 266 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.
- (2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.
- (3) On any application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.
- (4) Subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

(Added 6 of 1984 s. 183)
[cf. 1948 c. 38 s. 321 U.K.]

Note:*** Commencement date: 31 August 1984.**

Section:	266B	Fraudulent preference deemed to be an unfair preference	E.R. 2 of 2012	02/08/2012
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- (1) On and after the day section 36 of the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996) (the **amending Ordinance**) comes into operation, where the winding up of a company commences on or after that date-
 - (a) a reference in section 266 or 266A of this Ordinance to a fraudulent preference shall be deemed to be a reference to an unfair preference as provided for in section 50; and
 - (b) a reference in section 266 of this Ordinance to a period of 6 months shall be deemed to be a reference to a period of-
 - (i) 6 months; or
 - (ii) 2 years in the case of a person who is an associate as provided for in section 51B, of the Bankruptcy Ordinance (Cap 6) (the **principal Ordinance**).
- (2) Where the winding up of a company commences before the amending Ordinance comes into operation, the provisions of the principal Ordinance as it existed before being amended by the amending Ordinance apply in respect of sections 266 and 266A of this Ordinance.

(Added 76 of 1996 s. 76)

Section:	267	Effect of floating charge	E.R. 2 of 2012	02/08/2012
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Where a company is being wound up, a charge which, when created, was a floating charge on the undertaking or property of the company and which was also created within 12 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate specified in the charge or at the rate 12 per cent per annum whichever is the less.

(Amended 81 of 1976 s. 5; 84 of 1995 s. 7)

Section:	268	Disclaimer of onerous property in case of company wound up	E.R. 2 of 2012	02/08/2012
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- (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within 1 month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the court.

- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.
- (3) The court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.
- (4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as may be allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.
- (5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.
- (6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Ordinance in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as a person entitled to a mortgage or charge, except upon the terms of making that person-

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any under-lessee or person entitled to a mortgage or charge who declines to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a

representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company. (Amended 6 of 1984 s. 184)

- (7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up. [cf. 1929 c. 23 s. 267 U.K.]

Section:	269	Restriction of rights of creditor as to execution or attachment in case of company being wound up	E.R. 2 of 2012	02/08/2012
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- (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:
Provided that-
- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and
 - (b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and (Amended 6 of 1984 s. 185)
 - (c) the rights conferred by this subsection on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit. (Added 6 of 1984 s. 185)
- (2) For the purposes of this Ordinance-
- (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 20 of the High Court Ordinance (Cap 4); (Amended 25 of 1998 s. 2)
 - (b) an attachment of a debt is completed by the receipt of the debt; and
 - (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 20. (Replaced 52 of 1987 s. 44)
- (3) In this section, **goods** (貨品) includes all chattels personal, and **bailiff** (執達主任) includes any officer charged with the execution of a writ or other process.

[cf. 1929 c. 23 s. 268 U.K.]

Section:	270	Duties of bailiff as to goods taken in execution	E.R. 2 of 2012	02/08/2012
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- (1) Subject to subsection (2A), where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.
- (2) Subject to subsection (2A), where under an execution the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the bailiff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.
- (2A) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit. (Added 6 1984 s. 186)
- (3) In this section, **goods** (貨品) includes all chattels personal, and **bailiff** (執達主任) includes any officer charged with the execution of a writ or other process.

(Amended 6 of 1984 s. 186)

Section:	271	Offences by officers of companies in liquidation	E.R. 2 of 2012	02/08/2012
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Offences antecedent to or in course of Winding Up

- (1) If any person, being a past or present officer of a company which is at the time of the commission of the alleged offence being wound up, whether by the court or voluntarily, or which, subsequently to that time, is ordered to be wound up by the court or passes a resolution for voluntary winding up-
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
 - (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
 - (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
 - (d) within 12 months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of \$100 or upwards, or conceals any debt due to or from the company; or
 - (e) within 12 months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of \$100 or upwards; or
 - (f) makes any material omission in any statement relating to the affairs of the company; or
 - (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof; or
 - (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
 - (i) within 12 months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
 - (j) within 12 months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
 - (k) within 12 months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or
 - (l) after the commencement of the winding up or at any meeting of the creditors of the company within 12 months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses; or
 - (m)-(n) (Repealed 21 of 1970 s. 35)
 - (o) within 12 months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or
 - (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,
- he shall, in the case of the offence mentioned in paragraph (o), be liable to imprisonment, and in the case of any other offence shall be liable to imprisonment and a fine: (Amended 7 of 1990 s. 2)
- Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law. (Amended 21 of 1970 s. 35)
- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(o), any person who takes in pawn or pledge or otherwise receives the property knowing it

to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of an offence, and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

- (3) For the purposes of this section, **officer** (高級人員) includes a shadow director. (Amended 28 of 2003 s. 91)
(Amended 6 of 1984 s. 187)
[cf. 1929 c. 23 s. 271 U.K.]

Section:	272	Penalty for falsification of books	E.R. 2 of 2012	02/08/2012
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If any person, being a past or present officer or a contributory of any company being wound up, before or after the commencement of the winding up destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence and liable to imprisonment and a fine.

(Replaced 6 of 1984 s. 188. Amended 7 of 1990 s. 2)
[cf. 1948 c. 38 s. 329 U.K.]

Section:	273	Frauds by officers of companies which have gone into liquidation	E.R. 2 of 2012	02/08/2012
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If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up-

- (a) (Repealed 21 of 1970 s. 35)
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within 2 months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

he shall be guilty of an offence and liable to imprisonment and a fine.

(Amended 22 of 1950 s. 3; 6 of 1984 s. 189; 7 of 1990 s. 2)
[cf. 1929 c. 23 s. 273 U.K.]

Section:	274	Liability where proper accounts not kept	E.R. 2 of 2012	02/08/2012
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- (1) If where a company is wound up it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence and liable to imprisonment and a fine. (Replaced 6 of 1984 s. 190. Amended 7 of 1990 s. 2)
- (2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary, to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

[cf. 1929 c. 23 s. 274 U.K.]

Section:	275	Responsibility of directors for fraudulent trading	E.R. 2 of 2012	02/08/2012
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- (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the

company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

- (1A) On the hearing of an application under subsection (1) the Official Receiver or the liquidator, as the case may be, may himself give evidence or call witnesses. (Added 6 of 1984 s. 191)
- (2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the person liable or any such company or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.
- For the purpose of this subsection, *assignee* (承讓人) includes any person to whom or in whose favour, by the directions of the person liable under the declaration, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in manner aforesaid shall, whether or not the company has been or is in course of being wound up, be guilty of an offence and liable to imprisonment and a fine. (Replaced 6 of 1984 s. 191. Amended 7 of 1990 s. 2)
- (4)-(5) (Repealed 6 of 1984 s. 191)
- (6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made. (Amended 76 of 1996 s. 77)
- (7) (Repealed 6 of 1984 s. 191)

(Amended 6 of 1984 s. 191)
[cf. 1929 c. 23 s. 275 U.K.]

Section:	276	Power of court to assess damages against delinquent officer, etc.	E.R. 2 of 2012	02/08/2012
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- (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present officer or liquidator or receiver of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of duty in relation to the company which is actionable at the suit of the company, the court may, on the application of the Official Receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, officer, liquidator or receiver, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.
- (2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.
- (3) (Repealed 76 of 1996 s. 78)

(Amended 6 of 1984 s. 192)
[cf. 1929 c. 23 s. 276 U.K.]

Section:	277	Prosecution of delinquent officers and members of company	E.R. 2 of 2012	02/08/2012
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- (1) If it appears to the court in the course of a winding up by the court that any past or present officer or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Secretary for Justice. (Amended 6 of 1984 s. 193)

- (2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Secretary for Justice, and shall furnish to the Secretary for Justice such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he may require. (Amended 6 of 1984 s. 193)
- (3) If it appears to the court in the course of a voluntary winding up that any past or present officer or member of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Secretary for Justice under subsection (2), the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2). (Amended 6 of 1984 s. 193)
- (4) If, where any matter is reported or referred to the Secretary for Justice under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connexion with the prosecution which he is reasonably able to give.

For the purposes of this subsection, the expression *agent* (代理人) in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (5) If any person fails or neglects to give assistance in manner required by subsection (4), the court may, on the application of the Secretary for Justice, direct that person to comply with the requirements of the said subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that costs of the application shall be borne by the liquidator personally.

(Replaced 78 of 1972 s. 17. Amended L.N. 362 of 1997)
[cf. 1948 c. 38 s. 334 U.K.]

Section:	278	Disqualification for appointment as liquidator	E.R. 2 of 2012	02/08/2012
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Supplement Provisions as to Winding Up

No person being an undischarged bankrupt and no body corporate shall be qualified for appointment as liquidator of a company, whether in a winding up by the court or in a voluntary winding up, and-

- (a) any appointment made in contravention of this section shall be void; and
(b) where any such person or any body corporate acts as a liquidator of a company, such person or body corporate shall be liable to a fine. (Amended 7 of 1990 s. 2)

(Replaced 6 of 1984 s. 194)
[cf. 1948 c. 38 s. 335 U.K.]

Section:	278A	Corrupt inducement affecting appointment as liquidator	E.R. 2 of 2012	02/08/2012
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Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be liable to a fine.

(Added 6 of 1984 s. 195. Amended 7 of 1990 s. 2)
[cf. 1948 c. 38 s. 336 U.K.]

Section:	279	Enforcement of duty of liquidator to make returns, &c.	E.R. 2 of 2012	02/08/2012
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- (1) If any liquidator, who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar, make an order

directing the liquidator to make good the default within such time as may be specified in the order.

- (2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.
- (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

[cf. 1929 c. 23 s. 279 U.K.]

Section:	280	Notification that a company is in liquidation	E.R. 2 of 2012	02/08/2012
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- (1) Where a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up. (Amended 6 of 1984 s. 196)
- (2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine. (Replaced 6 of 1984 s. 196. Amended 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 280 U.K.]

Section:	281	Exemption of certain documents from stamp duty on winding up of companies	E.R. 2 of 2012	02/08/2012
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- (1) In the case of a winding up by the court or a creditors' voluntary winding up of a company, stamp duty shall not be payable in respect of- (Amended 6 of 1984 s. 197)
 - (a) any assurance relating solely to immovable property or personal property which forms part of the assets of the company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the company; or
 - (b) any other instrument relating solely to the property of any company which is being so wound up. (Replaced 31 of 1981 s. 65)
- (2) In this section, *assurance* (轉易書) includes deed, conveyance, assignment and surrender.

[cf. 1929 c. 23 s. 281 U.K.]

Section:	282	Books of company to be evidence	E.R. 2 of 2012	02/08/2012
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Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

[cf. 1929 c. 23 s. 282 U.K.]

Section:	283	Disposal of books and papers of company	E.R. 2 of 2012	02/08/2012
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- (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows, that is to say-
 - (a) in the case of a winding up by the court in such way as the court directs;
 - (b) in the case of a members' voluntary winding up, in such way as the company by special resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct. (Amended 6 of 1984 s. 198)
- (2) After 5 years from the dissolution of the company no responsibility shall rest on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.
- (3) Provision may be made by general rules for enabling the Official Receiver to prevent, for such period (not exceeding 5 years from the dissolution of the company) as he thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor or contributory of the company to make representations to him, and to appeal to the court from any direction which may be given by him in the matter.
- (4) If any person acts in contravention of any general rules made for the purposes of this section or of any direction

of the Official Receiver thereunder, he shall be liable to a fine. (Amended 22 of 1950 Schedule; 6 of 1984 s. 198; 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 283 U.K.]

Section:	284	Information as to pending liquidations	E.R. 2 of 2012	02/08/2012
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- (1) If where a company is being wound up the winding up is not concluded within 1 year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.
- (2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.
- (3) If a liquidator fails to comply with this section, he shall be liable to a fine and, for continued default, to a daily default fine, and any person untruthfully stating himself as aforesaid to be a creditor or contributory shall be guilty of a contempt of court, and shall, on the application of the liquidator or of the Official Receiver, be punishable accordingly. (Amended 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 284 U.K.]

Section:	285	Unclaimed assets to be paid to companies liquidation account	E.R. 2 of 2012	02/08/2012
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- (1) If it appears either from any statement sent to the Registrar under section 284 or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt, or any money held by the company in trust in respect of dividends or other sums due to any person as a member of the company, the liquidator shall forthwith pay the said money to the companies liquidation account, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.
- (2) (Repealed 6 of 1984 s. 199)
- (3) Any person claiming to be entitled to any money paid in pursuance of this section may, within 5 years of the date when the money was so paid, apply to the Official Receiver for payment thereof, and the Official Receiver may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. (Amended 71 of 1971 s. 3)
- (4) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of this section may appeal to the court.
- (5) Any money paid in pursuance of this section which remains unclaimed for a period of 5 years shall be transferred to the general revenue of Hong Kong. (Added 71 of 1971 s. 3. Amended 6 of 1984 s. 259)

(Amended 6 of 1984 s. 199)

[cf. 1929 c. 23 s. 285 U.K.]

Section:	286	Resolutions passed at adjourned meetings of creditors and contributories	E.R. 2 of 2012	02/08/2012
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Where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

(Amended 6 of 1984 s. 200)

[cf. 1929 . 23 s. 287 U.K.]

Section:	287	Meetings to ascertain wishes of creditors or contributories	L.N. 163 of 2013	03/03/2014
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Supplementary Powers of Court

- (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Ordinance or the Companies Ordinance (Cap 622) or by the articles. (Amended 28 of 2012 ss. 912 & 920)
[cf. 1929 c. 23 s. 288 U.K.]

Section:	288	(Repealed 6 of 1984 s. 201)		30/06/1997
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Section:	289	Affidavits, &c.	E.R. 2 of 2012	02/08/2012
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- (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Hong Kong, or in any jurisdiction before any court, judge or person authorized under the law of that jurisdiction to take and receive affidavits in that jurisdiction. (Amended 1 of 1949 s. 18; 6 of 1984 ss. 202 & 259)
- (2) All courts, judges, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge or person attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part. (Amended 47 of 1997 s. 10)
(Amended 25 of 1998 s. 2)
[cf. 1929 c. 23 s. 293 U.K.]

Section:	290	Power of court to declare dissolution of company void	E.R. 2 of 2012	02/08/2012
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Provisions as to Dissolution

- (1) Subject to subsection (1A), in the case of a company which has been dissolved under section 226A, 227, 239 or 248, the court may at any time within 2 years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. (Amended 75 of 1993 s. 17)
- (1A) The liquidator of the company or any other person who appears to the court to be interested may at any time apply to extend the period of 2 years referred to in subsection (1) and the court may so extend, on such terms and conditions as seem to it just and expedient, if it is satisfied that there are exceptional circumstances justifying the extension. (Added 75 of 1993 s. 17)
- (2) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order, or such further time as the court may allow, to deliver to the Registrar for registration an office copy of the order, and if that person fails so to do he shall be liable to a fine and, for continued default, to daily default fine. (Amended 7 of 1990 s. 2)
(Amended 6 of 1984 s. 203)
[cf. 1929 c. 23 s. 294 U.K.]

Section:	290A	(Repealed 30 of 1999 s. 18)	L.N. 239 of 1999	11/11/1999
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Note:

Section 290A was repealed by the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 43 of that Ordinance provides as follows-

"43. Savings

Despite the repeal of sections 265(1)(da), 290A, 290B and 290E of the principal Ordinance, those sections are to continue to have effect in relation to a company that has been struck off under section 290A of the principal Ordinance as if those sections had not been repealed."

Section:	290B	(Repealed 30 of 1999 s. 18)	L.N. 239 of 1999	11/11/1999
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Note:

Section 290B was repealed by the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 43 of that Ordinance provides as follows-

"43. Savings

Despite the repeal of sections 265(1)(da), 290A, 290B and 290E of the principal Ordinance, those sections are to continue to have effect in relation to a company that has been struck off under section 290A of the principal Ordinance as if those sections had not been repealed."

Section:	290C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	290D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	290E	(Repealed 30 of 1999 s. 21)	L.N. 239 of 1999	11/11/1999
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Note:

Section 290E was repealed by the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 43 of that Ordinance provides as follows-

"43. Savings

Despite the repeal of sections 265(1)(da), 290A, 290B and 290E of the principal Ordinance, those sections are to continue to have effect in relation to a company that has been struck off under section 290A of the principal Ordinance as if those sections had not been repealed."

Section:	291	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	291A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	291AA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	291AB	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	291B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	292	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	292A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	293	Companies liquidation account	E.R. 2 of 2012	02/08/2012
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Central Accounts

- (1) An account, to be called the Companies Liquidation Account, shall be kept by the Official Receiver at such bank as the Chief Executive may from time to time direct, and all moneys received by the Official Receiver in respect of proceedings under this Ordinance in connexion with the winding up of companies shall be paid to that account. (Amended 1 of 1949 s. 20; 24 of 1950 Schedule; 23 of 1999 s. 3)
- (2) All payments out of money standing to the credit of the Official Receiver in the Companies Liquidation Account shall be made in the prescribed manner.

[cf. 1929 c. 23 s. 300 U.K.]

Section:	294	Investment of surplus funds on general account	E.R. 2 of 2012	02/08/2012
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- (1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Official Receiver is required for the time being to answer demands in respect of companies' estates, he may invest in his name the whole or any part of such excess on fixed deposit or deposit at call with such bank as he thinks fit or in Government securities. (Replaced 79 of 1988 s. 9. Amended 23 of 1999 s. 3)
- (2) When any part of the money placed on deposit or otherwise invested under subsection (1) is, in the opinion of the Official Receiver, required to answer any demands in respect of companies' estates, he shall raise such sum as may be required by the withdrawal of such part of any money placed on deposit or by sale of such part of the securities referred to in subsection (1), as may be necessary. (Replaced 79 of 1988 s. 9)
- (3) The interest on investments or deposits made under this section, any profits realized on the sale of such investments and any bank interest received shall be paid into the Companies Liquidation Account, and the Official Receiver shall on or before 31 March in each year transfer to the general revenue the accumulated balance of such income, profits and bank interest, after deducting therefrom any losses on the realization of such investments. (Replaced 15 of 1955 s. 9. Amended 6 of 1984 s. 206)

Section:	295	Separate accounts of particular estates	E.R. 2 of 2012	02/08/2012
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- (1) The Official Receiver shall keep an account of the receipts and payments in the winding up of each company.
- (2) When the cash balance standing to the credit of the account of any company exceeds by \$100000 or more the amount which, in the opinion of the committee of inspection or where there is no committee of inspection in the opinion of the liquidator, is required for the time being to answer demands in respect of the company's estate, the Official Receiver shall, on the request of the committee of inspection or where there is no committee of inspection on the request of the liquidator, invest the amount of such excess on fixed deposit or on deposit at call with such bank as the Official Receiver thinks fit or in Government securities, to be placed to the credit of the account of the company. (Amended 23 of 1999 s. 3)
- (3) When any part of the money so invested is, in the opinion of the committee of inspection or where there is no committee of inspection in the opinion of the liquidator, required to answer any demands in respect of the estate of the company, the Official Receiver shall, on the request of the committee of inspection or where there is no committee of inspection on the request of the liquidator, raise such sum as may be required by the withdrawal of such part of any money placed on deposit or by the sale of such part of the securities referred to in subsection (2), as may be necessary.
- (4) Out of the interest paid on the investments made under this section, an amount equal to 1 1/2% per annum (or such other rate as may be fixed by the Financial Secretary for the purposes of this section by notice published in the Gazette) of the money invested shall be paid to the credit of the Official Receiver and the balance shall be paid to the credit of the company.
- (5) The Official Receiver shall on or before 31 March in each year transfer to the general revenue the accumulated amount paid to his credit under subsection (4).

Section:	296	General rules and fees	L.N. 163 of 2013	03/03/2014
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Rules and Fees

- (1) The Chief Justice may, with the approval of the Legislative Council, make general rules for carrying into effect the objects of this Ordinance and the Companies Ordinance (Cap 622) so far as relates to the winding up of companies. (Amended 28 of 2012 ss. 912 & 920)
- (2) All rules and orders made under this section shall be judicially noticed, and shall have effect as if enacted by this Ordinance.
- (2A) An answer given by a person to a question put to him in exercise of powers conferred by rules made under this section may be used in evidence against him. (Added 72 of 1994 s. 10)
- (3) There shall be paid in respect of the relevant proceedings, where no fee is otherwise fixed, such fees as the Chief Justice may, with the approval of the Legislative Council by order, direct, and he may direct by whom and in what manner the same are to be collected and accounted for. (Amended 28 of 2012 ss. 912 & 920)
- (3A) In subsection (3)—

relevant proceedings (有關法律程序) means—

- (a) proceedings under this Ordinance (other than winding up proceedings); or
- (b) proceedings in the winding up of companies, including those where proceedings under this Ordinance or the Companies Ordinance (Cap 622) are taken with respect to a company which is being wound up. (Added 28 of 2012 ss. 912 & 920)
- (4) The amount of any fees prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Official Receiver in the winding up of companies or of any particular company. (Added 38 of 1987 s. 5)
- (5) Without prejudice to the generality of subsection (4), fees referred to in that subsection may be fixed by reference to a scale of fees and percentages. (Added 38 of 1987 s. 5)
- (6) Rules or orders made under this section may authorize the court to fix any fee or to vary the amount of any fee otherwise prescribed. (Added 38 of 1987 s. 5)
- (7) No fee prescribed under this section shall be invalid by reason only of the amount of that fee. (Added 38 of 1987 s. 5)
- (8) Fees required to be paid under rules or orders made under this section shall be recoverable as debt. (Added 38 of 1987 s. 5. Amended L.N. 587 of 1995)
- (9) Rules or orders made under this section before the commencement of the Companies (Amendment)(No. 2) Ordinance 1987 (38 of 1987) and in force immediately before such commencement shall have effect as from the commencement of that Ordinance as if made under this section as amended by that Ordinance. (Added 38 of 1987 s. 5)

(Amended 6 of 1984 s. 208; 38 of 1987 s. 5)
[cf. 1929 c. 23 s. 305 U.K.]

Part:	VI	Receivers and Managers	E.R. 1 of 2014	03/03/2014
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(*Format changes—E.R. 1 of 2014)

Note:

* The format of Part VI has been updated to the current legislative styles.

Section:	297	Disqualification for appointment as receiver	E.R. 1 of 2014	03/03/2014
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- (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.
- (2) Any body corporate which acts as receiver as aforesaid shall be liable to a fine. (Amended 22 of 1950 Schedule; 6 of 1984 s. 259; 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 306 U.K.]

Section:	297A	Disqualification of undischarged bankrupts	E.R. 1 of 2014	03/03/2014
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No person being an undischarged bankrupt shall be qualified for appointment as receiver or manager of the property of a company on behalf of debenture holders, and if such person acts as such receiver or manager, he shall be guilty of an offence and liable to imprisonment and a fine.

(Added 6 of 1984 s. 209. Amended 7 of 1990 s. 2)
[cf. 1948 c. 38 s. 367 U.K.]

Section:	298	Power to appoint Official Receiver as receiver for debenture holders or creditors	E.R. 1 of 2014	03/03/2014
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Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the Official Receiver may be so appointed.

[cf. 1929 c. 23 s. 307 U.K.]

Section:	298A	Receivers and managers appointed out of court	E.R. 1 of 2014	03/03/2014
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- (1) A receiver or manager of the property of a company appointed under the powers contained in any instrument, or a holder of debentures of the company, may apply to the court for directions in relation to any particular matter arising in connexion with the performance of the functions of such receiver or manager, and on any such application the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as the court thinks just.
- (2) A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets; but nothing in this subsection shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.
- (3) This section shall apply whether the receiver or manager was appointed before or after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984) but subsection (2) shall not apply to contracts entered into before the commencement of that Ordinance.

(Added 6 of 1984 s. 210)
[cf. 1948 c. 38 s. 369 U.K.]

Note:

* Commencement date: 31 August 1984.

Section:	299	Notification that receiver or manager appointed	E.R. 1 of 2014	03/03/2014
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- (1) Where a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be liable to a fine. (Replaced 6 of 1984 s. 211. Amended 7 of 1990 s. 2)

[cf. 1929 c. 23 s. 308 U.K.]

Section:	300	Power of court to fix remuneration on application of liquidator	E.R. 1 of 2014	03/03/2014
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- (1) The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an application

made either by the liquidator, or by the receiver or manager, vary or amend any order so made. (Amended 6 of 1984 s. 212)

- (2) The power of the court under subsection (1) shall, where no previous order has been made with respect thereto under that subsection,-
- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor; and
 - (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
 - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order:
- Provided that the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the court there are special circumstances making it proper for the power to be so exercised. (Added 6 of 1984 s. 212)
- (3) This section shall apply whether the receiver or manager was appointed before or after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), and to periods before, as well as to periods after, the commencement of that Ordinance. (Added 6 of 1984 s. 212)

[cf. 1929 c. 23 s. 309 U.K.]

Note:

* **Commencement date: 31 August 1984.**

Section:	300A	Provisions as to information where receiver or manager is appointed	E.R. 1 of 2014	03/03/2014
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- (1) Where a receiver or manager of the whole or substantially the whole of the property of the company (in this section and in section 300B referred to as *the receiver*) is appointed on behalf of the holders of any debentures of the company secured by a floating charge, then subject to the provisions of this section and section 300B-
- (a) the receiver shall forthwith send to the company notice of his appointment in the specified form; and (Amended 3 of 1997 s. 44)
 - (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the court or by the receiver, be made out and submitted to the receiver in accordance with section 300B a statement in the specified form as to the affairs of the company (the *statement of affairs*); and (Amended 3 of 1997 s. 44; 28 of 2003 s. 92)
 - (c) the receiver shall within 2 months after receipt of the statement of affairs send- (Amended 28 of 2003 s. 92)
 - (i) to the Registrar and to the court, a copy of the statement and of any comments he sees fit to make thereon and in the case of the Registrar also a summary of the statement and of his comments (if any) thereon; and
 - (ii) to the company, a copy of any such comments as aforesaid or, if he does not see fit to make any comment, a notice to that effect; and
 - (iii) to any trustees for the debenture holders on whose behalf he was appointed and, so far as he is aware of their addresses, to all such debenture holders a copy of the said summary.
- (2) The receiver shall within 2 months, or such longer period as the court may allow after the expiration of the period of 12 months from the date of his appointment and of every subsequent period of 12 months, and within 2 months or such longer period as the court may allow after he ceases to act as receiver or manager of the property of the company, send to the Registrar, to any trustees for the debenture holders of the company on whose behalf he was appointed, to the company and (so far as he is aware of their addresses) to all such debenture holders an abstract in the specified form showing his receipts and payments during that period of 12 months or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amounts of his receipts and of his payments during all preceding periods since his appointment. (Amended 3 of 1997 s. 44)
- (3) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect-
- (a) with the omission of the references to the court in subsection (1); and
 - (b) with the substitution for the references to the court in subsection (2) of references to the Official Receiver.
- (4) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing

receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before it has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver shall, subject to subsection (5), include references to his successor and to any continuing receiver or manager.

Nothing in this subsection shall be taken as limiting the meaning of the expression *the receiver* where used in, or in relation to, subsection (2).

- (5) This section and section 300B, where the company is being wound up, shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (6) Nothing in subsection (2) shall be taken to prejudice the duty of the receiver to render proper accounts of his receipts and payments to the persons to whom, and at the times at which, he may be required to do so apart from that subsection.
- (7) If the receiver makes default in complying with the requirements of this section, he shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)
- (8) This section shall not apply where the receiver or manager was appointed before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984).

(Added 6 of 1984 s. 213)
[cf. 1948 c. 38 s. 372 U.K.]

Note:

*** Commencement date: 31 August 1984.**

Section:	300B	Special provisions as to statement submitted to receiver	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) The statement of affairs required by section 300A to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The statement of affairs required by section 300A shall be submitted by, and be verified by statement in writing signed by, one or more of the persons who are at the date of the receiver's appointment the directors and by the person who is at that date the company secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement of affairs, that is to say, persons- (Amended 28 of 2003 s. 93; 28 of 2012 ss. 912 & 920)
 - (a) who are or have been officers of the company;
 - (b) who have taken part in the formation of the company at any time within 1 year before the date of the receiver's appointment;
 - (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the receiver capable of giving the information required;
 - (d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement of affairs relates.
- (3) Any person making the statement of affairs required by section 300A or the written statement required by subsection (2) shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement of affairs or written statement as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.
- (4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the Official Receiver.
- (5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)
- (6) References in this section to a receiver's successor shall include a continuing receiver or manager.
- (7) This section shall not apply where the receiver or manager was appointed before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984).

(Added 6 of 1984 s. 213. Amended 28 of 2003 s. 93)
[cf. 1948 c. 38 s. 373 U.K.]

Note:

* Commencement date: 31 August 1984.

Section:	301	Delivery to Registrar of accounts of receivers and managers	E.R. 1 of 2014	03/03/2014
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- (1) Except where section 300A(2) applies, every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within 1 month, or such longer period as the Registrar may allow, after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within 1 month after he ceases to act as receiver or manager, deliver to the Registrar for registration an abstract in the specified form showing his receipts and his payments during that period of 6 months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment. (Amended 3 of 1997 s. 45)
- (2) Any receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)
- (Amended 6 of 1984 s. 214)
[cf. 1929 c. 23 s. 310 U.K.]

Section:	302	Enforcement of duty of receiver to make returns, &c.	E.R. 1 of 2014	03/03/2014
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- (1) If-
- (a) any receiver or manager of the property of a company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or
- (b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him;
- the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order. (Amended 6 of 1984 s. 215)
- (2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar, and in the case of any such default as is mentioned in subsection (1)(b), the application shall be made by the liquidator, and in either case the order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be. (Replaced 6 of 1984 s. 215)
- (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on receivers or managers in respect of such default as is mentioned in subsection (1). (Replaced 6 of 1984 s. 215)
[cf. 1929 c. 23 s. 311 U.K.]

Section:	302A	Construction of references to receivers and managers	E.R. 1 of 2014	03/03/2014
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Except where the context otherwise requires-

- (a) any reference in this Ordinance to a receiver or manager of the property of a company, or to a receiver thereof, includes a reference to a receiver or manager, or (as the case may be) to a receiver, of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
- (b) any reference in this Ordinance to the appointment of a receiver or manager under powers contained in any instrument includes a reference to an appointment made under powers conferred by any enactment including powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

(Added 6 of 1984 s. 216)
[cf. 1948 c. 38 s. 376 U.K.]

Part:	VII	General Provisions as to Registration	E.R. 1 of 2014	03/03/2014
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(*Format changes—E.R. 1 of 2014)

Note:

* **The format of Part VII has been updated to the current legislative styles.**

Section:	303	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	303A	(Repealed 28 of 2003 s. 94)	L.N. 267 of 2003	13/02/2004
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Section:	303B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	304	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	305	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	305A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	306	Enforcement of duties under Ordinance by court order	E.R. 1 of 2014	03/03/2014
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- (1) If a company or any officer of a company, having made default in complying with any requirement of this Ordinance, fails to make good the default within 14 days after the service of a notice on the company or officer requiring the company or officer to comply with that requirement, the court may, on an application made to it by any member or creditor of the company or by the Registrar, make an order-
 - (a) where the default was that of the company, directing the company and any officer thereof;
 - (b) where the default was that of an officer, directing that officer,
 to make good the default within such time as may be specified in the order.
- (2) Any such order may provide that all costs of and incidental to the application shall be borne-
 - (a) where the default was that of a company, by the company or by any officer of the company responsible for the default;
 - (b) where the default was that of an officer, by that officer.
- (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or any officer of a company in respect of any such default as aforesaid.

(Replaced 6 of 1984 s. 219)
[cf. 1948 c. 38 s. 428 U.K.]

Part:	VIII	Application of Ordinance to Companies Formed or Registered under Companies Ordinances*	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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(#Format changes—E.R. 1 of 2014)

Note:

* **(Amended 28 of 2012 ss. 912 & 920)**

The format of Part VIII has been updated to the current legislative styles.

Section:	307	Application of Ordinance to companies formed under former Companies Ordinance	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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In the application of this Ordinance to existing companies, it shall apply in the same manner-

- (a) in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under the Companies Ordinance (Cap 622) as a company limited by shares;
- (b) in the case of a company limited by guarantee, as if the company had been formed and registered under the Companies Ordinance (Cap 622) as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, as if the company had been formed and registered under the Companies Ordinance (Cap 622) as an unlimited company: (Amended 28 of 2012 ss. 912 & 920)

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under a former Companies Ordinance.

(Amended 28 of 2012 ss. 912 & 920)
[cf. 1929 c. 23 s. 316 U.K.]

Section:	308	Application of Ordinance to companies registered under Companies Ordinances	L.N. 163 of 2013	03/03/2014
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- (1) Subject to section 308A, this Ordinance applies to a company registered but not formed under the Companies Ordinance (Cap 622) and its officers, members, contributories and creditors in the same manner in all respects as if the company had been formed under that Ordinance.
- (2) This Ordinance applies to a company registered but not formed under a former Companies Ordinance and its officers, members, contributories and creditors in the same manner as it applies to a company registered but not formed under the Companies Ordinance (Cap 622).
- (3) For the purposes of applying this Ordinance to a company registered but not formed under a former Companies Ordinance or the Companies Ordinance (Cap 622), a reference in this Ordinance to the date of registration is to be read as the date on which the company was registered under the former Companies Ordinance or the Companies Ordinance (Cap 622), as the case may be.

(Replaced 28 of 2012 ss. 912 & 920)

Section:	308A	Exceptions to section 308	L.N. 163 of 2013	03/03/2014
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- (1) If a company registered but not formed under the Companies Ordinance (Cap 622) is wound up, every person who has a relevant liability is—
 - (a) a contributory in respect of the company’ s debts and liabilities contracted before registration; and
 - (b) a contributory who is liable to contribute to the assets of the company, in the course of the winding up, all sums due from the person in respect of the relevant liability.
- (2) In subsection (1)—

relevant liability (相關法律責任) means the liability to pay or contribute to the payment of—

 - (a) the company’ s debts and liabilities contracted before the registration;
 - (b) any sum for the adjustment of the rights of the members among themselves in respect of those debts and liabilities; or
 - (c) the costs and expenses of winding up the company, so far as relating to those debts and liabilities.
- (3) In the event of the death or bankruptcy of such a contributory, the provisions of this Ordinance with respect to the personal representatives of deceased contributories, and to the trustees of bankrupt contributories, apply.

(Added 28 of 2012 ss. 912 & 920)

Section:	309	Application of Ordinance to companies re-registered under Companies Ordinances	L.N. 163 of 2013	03/03/2014
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- (1) This Ordinance as read with section 133 of the Companies Ordinance (Cap 622) applies to an unlimited company registered as a limited company under—
 - (a) section 58 of the Companies Ordinance 1911 (58 of 1911);
 - (b) section 19 of the pre-amended Ordinance; and

(c) section 130 of the Companies Ordinance (Cap 622).

- (2) For the purposes of applying this Ordinance to an unlimited company registered as a limited company under the Companies Ordinance 1911 (58 of 1911), the pre-amended Ordinance or the Companies Ordinance (Cap 622), a reference in this Ordinance to the date of registration is to be read as the date on which the unlimited company was registered as a limited company under the Companies Ordinance 1911 (58 of 1911), the pre-amended Ordinance or the Companies Ordinance (Cap 622), as the case may be.

(Replaced 28 of 2012 ss. 912 & 920)

Part:	IX	Companies not Formed, but Registered, under Companies Ordinances*	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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(#Format changes—E.R. 1 of 2014)

Note:

* (Amended 28 of 2012 ss. 912 & 920)

The format of Part IX has been updated to the current legislative styles.

Section:	310	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	311	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	312	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	313	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	314	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	315	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	316	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	317	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	318	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	319	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	320	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	321	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	322	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	323	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	324	Power of court to stay or restrain proceedings	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of Part IX of the pre-amended Ordinance, or Part 17 of the Companies Ordinance (Cap 622), where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(Amended 28 of 2012 ss. 912 & 920)
[cf. 1929 c. 23 s. 335 U.K.]

Section:	325	Actions stayed on winding-up order	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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Where an order has been made for winding up a company registered in pursuance of Part IX of the pre-amended Ordinance, or Part 17 of the Companies Ordinance (Cap 622), no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

(Amended 28 of 2012 ss. 912 & 920)
[cf. 1929 c. 23 s. 336 U.K.]

Part:	X	Winding up of unregistered Companies	E.R. 1 of 2014	03/03/2014
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(*Format changes—E.R. 1 of 2014)

Note:

* The format of Part X has been updated to the current legislative styles.

Section:	326	Meaning of unregistered companies	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) For the purposes of this Part, **unregistered company** (非註冊公司) includes any partnership, whether limited or not, any association and any company with the following exceptions- (Amended 3 of 1997 s. 48)
 - (a) a company registered under the Companies Ordinance 1865 (1 of 1865), or under the Companies Ordinance 1911 (58 of 1911), or under the pre-amended Ordinance, or under the Companies Ordinance (Cap 622); (Amended 28 of 2012 ss. 912 & 920)
 - (b) a partnership, association or company which consists of less than 8 members and is not formed or established outside Hong Kong; (Amended 23 of 1998 s. 2)
 - (c) a partnership registered in Hong Kong under the Limited Partnerships Ordinance (Cap 37). (Amended 6 of 1984 s. 259)
- (2) For the avoidance of doubt, it is declared that in subsection (1), **unregistered company** includes a registered non-Hong Kong company. (Replaced 30 of 2004 s. 2. Amended 28 of 2012 ss. 912 & 920)
[cf. 1929 c. 23 s. 337 U.K.]

Section:	327	Winding up of unregistered companies	E.R. 1 of 2014	03/03/2014
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- (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the

exceptions and additions mentioned in this section.

- (2) No unregistered company shall be wound up voluntarily under this Ordinance.
- (3) The circumstances in which an unregistered company may be wound up are as follows-
 - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the court is of opinion that it is just and equitable that the company should be wound up.
- (4) An unregistered company shall, for the purposes of this Ordinance, be deemed to be unable to pay its debts-
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due equal to or exceeding the specified amount, has served on the company, by leaving at its principal place of business, or by delivering to any officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor; (Amended 28 of 2003 s. 103)
 - (b) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to any officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
 - (c) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
 - (d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.
- (5) For the purpose of subsection (4)(a), *specified amount* (指明款額) means the amount of \$10000 or, where an amount is prescribed under subsection (6), the prescribed amount. (Added 28 of 2003 s. 103)
- (6) The Financial Secretary may, by regulation, prescribe any amount for the purposes of subsection (5). (Added 28 of 2003 s. 103)

(Replaced 6 of 1984 s. 222)
[cf. 1948 c. 38 s. 399 U.K.]

Section:	327A	Oversea companies may be wound up although dissolved	E.R. 1 of 2014	03/03/2014
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Where a company incorporated outside Hong Kong which has been carrying on business in Hong Kong ceases to carry on business in Hong Kong, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the place of its incorporation.

(Added 6 of 1984 s. 223)
[cf. 1948 c. 38 s. 400 U.K.]

Section:	328	Contributories in winding up of unregistered company	E.R. 1 of 2014	03/03/2014
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- (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.
- (2) In the event of the death, bankruptcy, or insolvency, of any contributory, the provisions of this Ordinance with respect to the personal representatives of deceased contributories and to the trustees of bankrupt or insolvent contributories shall apply. (Amended 6 of 1984 s. 224; 30 of 1999 s. 27)

[cf. 1929 c. 23 s. 339 U.K.]

Section:	329	Power of court to stay or restrain proceeding	E.R. 1 of 2014	03/03/2014
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The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

[cf. 1929 c. 23 s. 340 U.K.]

Section:	330	Actions stayed on winding-up order	E.R. 1 of 2014	03/03/2014
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Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

[cf. 1929 c. 23 s. 341 U.K.]

Section:	331	Provisions of Part X cumulative	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Ordinance contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under the Companies Ordinance (Cap 622): (Amended 28 of 2012 ss. 912 & 920)

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this Part.

[cf. 1929 c. 23 s. 342 U.K.]

Section:	331A	Saving for enactments providing for winding up under former Companies Ordinances	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by the pre-amended Ordinance.

(Added 6 of 1984 s. 225. Amended 28 of 2012 ss. 912 & 920)

[cf. 1948 c. 38 s. 405 U.K.]

Part:	XI	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	332	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	333	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	333AA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	333A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	333B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	333C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	334	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	335	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	336	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	336A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	337	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	337A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	337B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	338	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	339	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	339AA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	339A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	340	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	341	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Part:	XII	Restrictions on Sale of Shares and Offers of Shares for Sale	E.R. 2 of 2012	02/08/2012

(*Format changes—E.R. 2 of 2012)

Note:

* The format of Part XII has been updated to the current legislative styles.

Section:	342	Dating of prospectus and particulars to be contained therein	L.N. 163 of 2013	03/03/2014
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- (1) Subject to section 342A, it shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong unless the prospectus is dated (which date shall, unless the contrary is proved, be taken as the date of publication of the prospectus) and- (Amended 86 of 1992 s. 12; 30 of 2004 s. 2)
- (a) contains particulars with respect to the following matters-
- (i) the instrument constituting or defining the constitution of the company;
 - (ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
 - (iii) an address in Hong Kong where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English or Chinese a translation thereof in English or Chinese certified in the prescribed manner, can be inspected; (Amended 83 of 1995 s. 19)
 - (iv) the date on which and the country in which the company was incorporated;
 - (v) whether the company has established a place of business in Hong Kong, and, if so, the address of its principal office in Hong Kong;
- (b) subject to the provisions of this section, is either in the English language and contains a Chinese translation or in the Chinese language and contains an English translation, and states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule: (Amended 83 of 1995 s. 19)
- Provided that the provisions of paragraph (a)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of this subsection, paragraph 5 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company. (Amended 6 of 1984 s. 259)
- (2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of subsection (1)(a) or (b), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
- (2A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 2 of the Eighteenth Schedule. (Added 30 of 2004 s. 2)
- (3) Subject to section 342A, it shall not be lawful for any person to issue to any person in Hong Kong a form of application for shares in or debentures of such a company as is mentioned in subsection (1) unless the form is issued with a prospectus which complies with this Part and the issue whereof in Hong Kong does not contravene the provisions of section 342B: (Amended 6 of 1984 s. 259; 86 of 1992 s. 12)
- 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 connection 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 (Amended 30 of 2004 s. 2)
 - (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)
- (4) In the event of non-compliance with or contravention of any of the requirements imposed by subsection (1)(a) and (b), 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 were 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 contained in paragraph 19 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.
- (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 a 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 form of application whether issued on the formation of a company or subsequently.
- (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 incorporated outside Hong Kong. (Added 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 incorporated outside Hong Kong, 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)
(Replaced 78 of 1972 s. 18)
[cf. 1948 c. 38 s. 417 U.K.]

Section:	342A	Exemption of certain persons and prospectuses from compliance with certain requirements	E.R. 2 of 2012	02/08/2012
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- (1) Where it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) 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 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 342(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 44A(1), (2) or (6), 44B(1) or (2), 342(1), (2A), (3) or (7) or 342C(3) or (4); or
 - (b) Part 2 of the Twentieth Schedule or Part 2 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. 51)
- (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. 13)

Section:	342AA	Exemption for structured products	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

17, 18, 19, 20, 21, 22

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

- (a) this Part (other than this section);
- (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. 19)

Section:	342B	Provisions as to expert's consent, and allotment	E.R. 2 of 2012	02/08/2012
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- (1) It shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong- (Amended 6 of 1984 s. 259; 30 of 2004 s. 2)
- (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
 - (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering

all persons concerned bound by all the provisions (other than penal provisions) of sections 44A (except insofar as exemption from compliance has been granted under section 342A) and 44B so far as applicable. (Amended 86 of 1992 s. 14)

(1A) (Repealed 30 of 2004 s. 2)

(2) In this section the expression *expert* (專家) includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him, and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

(Added 78 of 1972 s. 18)
[cf. 1948 c. 38 s. 419 U.K.]

Section:	342C	Registration of prospectus	L.N. 163 of 2013	03/03/2014
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(1) No prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) shall be issued, circulated or distributed in Hong Kong unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, circulation or distribution in Hong Kong, its registration has been authorized under this section and a copy thereof has been registered by the Registrar. (Amended 30 of 2004 s. 2)

(2) Every prospectus shall-

(a) on the face of it, state that a copy has been registered as required by this section and, immediately after such statement, state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; (Amended 30 of 2004 s. 2)

(b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and

(c) conform with such requirements as are prescribed by the Chief Executive in Council and the requirements set out in subsection (7A). (Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920)

(3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been certified by 2 members of the governing body of the company or by their agents authorized in writing as having been approved by resolution of the governing body and having endorsed thereon or attached thereto-

(a) any consent to the issue of the prospectus required by section 342B from any person as an expert; and

(b) in the case of a prospectus issued generally, also-

(i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 342A from compliance with the requirements of section 342(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 342A(1), a copy or, as the case may be, a memorandum of that contract;

(ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and

(iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (9) to be a correct translation. (Amended 83 of 1995 s. 20; 30 of 2004 s. 2)

(5) The Commission may-

- (a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate-
 - (i) certifying that the Commission has done so; and
 - (ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or
- (b) refuse to authorize such registration.
- (6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.
- (7) The Registrar-
 - (a) shall not register a prospectus under this section unless-
 - (i) it is dated and the copy thereof to be registered has been certified in the manner required by this section;
 - (ii) it is accompanied by a certificate issued under subsection (5);
 - (iii) it is endorsed thereon or attached thereto all the documents specified in the certificate granted under subsection (5); (Amended 28 of 2012 ss. 912 & 920)
 - (iv) it conforms with such requirements as are prescribed by the Chief Executive in Council and the requirements set out in subsection (7A); and (Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920)
 - (v) it is accompanied by any fee that is payable, in respect of the registration, under a regulation made under section 26 of the Companies Ordinance (Cap 622); and (Added 28 of 2012 ss. 912 & 920)
 - (b) shall register a prospectus if subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph (a) are complied with in respect of that prospectus. (Amended 28 of 2012 ss. 912 & 920)
- (7A) The following are the requirements set out for the purposes of subsections (2)(c) and (7)(a)(iv)-
 - (a) any requirement that the Registrar may specify, by notice in the Gazette, in relation to font size of prospectuses for the purposes of this section;
 - (b) any other requirements that the Registrar may specify for the purpose of-
 - (i) ensuring that documents of the same kind are of a standard form; and
 - (ii) enabling the Registrar to make copies or image records of documents and to make and keep records of the information contained in them. (Added 28 of 2012 ss. 912 & 920)
- (7B) For the purposes of subsection (7A)(b), the Registrar may specify different requirements for different documents or classes of documents. (Added 28 of 2012 ss. 912 & 920)
- (8) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.
- (9) A translation mentioned in subsection (4) shall be-
 - (a) certified by the person making the translation as a correct translation; and
 - (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say-
 - (i) if the translation be made outside Hong Kong-
 - (A) a notary public in the place where the translation is made;
 - (B) such other person as may be specified by the Commission; or
 - (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;
 - (ii) if the translation be made in Hong Kong-
 - (A) a notary public in Hong Kong;
 - (B) a solicitor of the High Court of Hong Kong;
 - (C) such other person as may be specified by the Commission; or
 - (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph. (Added 30 of 2004 s. 2)
- (10) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation. (Added 30 of 2004 s. 2)
(Replaced 86 of 1992 s. 15)

Section:	342CA	Amendment of prospectus consisting of one document	E.R. 2 of 2012	02/08/2012
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- (1) A prospectus-
 - (a) consisting of one document; and

- (b) to which the provisions of this Part are applicable, may only be amended in accordance with the provisions of Part 2 of the Twentieth Schedule.
- (2) The provisions of Part 2 of the Twentieth Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which may be amended under subsection (1).
- (3) If any company contravenes subsection (1), the company and every officer of the company who is in default shall be liable to a fine.
- (4) For the avoidance of doubt, it is hereby declared that this section and Part 2 of the Twentieth Schedule do not apply to a prospectus to which section 342CB applies.

(Added 30 of 2004 s. 2)

Section:	342CB	Prospectus may consist of more than one document, etc.	E.R. 2 of 2012	02/08/2012
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- (1) A prospectus to which the provisions of this Part are applicable may consist of more than one document in accordance with the provisions of Part 2 of the Twenty-first Schedule.
- (2) A prospectus to which subsection (1) applies may only be amended in accordance with the provisions of Part 2 of the Twenty-first Schedule.
- (3) The provisions of Part 2 of the Twenty-first Schedule may alter the operation of a provision of this Part in relation to any prospectus, or class of prospectuses, which falls within subsection (1) or which may be amended under subsection (2).
- (4) If any company contravenes subsection (2), the company and every officer of the company who is in default shall be liable to a fine.

(Added 30 of 2004 s. 2)

Section:	342CC	Submission of certified copies	L.N. 163 of 2013	03/03/2014
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Where any document (howsoever described), other than a prospectus, is required under this Part to be submitted to the Registrar by a company incorporated outside Hong Kong, the requirement shall be deemed to be satisfied by the submission to the Registrar of a copy of the document certified—

- (a) to be a true copy of the document; and
- (b) by—
- (i) a member of the governing body of the company;
 - (ii) the company secretary of the company; (Amended 28 of 2012 ss. 912 & 920)
 - (iii) an agent of a member of the governing body or of the company secretary of the company, authorized in writing for the purpose by the member or company secretary; (Amended 28 of 2012 ss. 912 & 920)
 - (iv) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap 159) or a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap 50); or (Amended 10 of 2005 s. 224)
 - (v) a notary public within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap 159).

(Added 30 of 2004 s. 2)

Section:	342D	Penalty for contravention of sections 342 to 342C	E.R. 2 of 2012	02/08/2012
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Expanded Cross Reference:

342, 342A, 342B, 342C

Any person who is knowingly responsible for the issue, circulation or distribution of a prospectus, or for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 342 to 342C shall be liable to a fine. <* Note - Exp. X-Ref.: Sections 342, 342A, 342B, 342C *>

(Added 78 of 1972 s. 18. Amended 7 of 1990 s. 2)
[cf. 1948 c. 38 s. 421 U.K.]

Section:	342E	Civil liability for misstatements in prospectus	E.R. 2 of 2012	02/08/2012
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Section 40 shall extend to every prospectus offering for subscription or purchase shares in or debentures of a company

incorporated outside Hong Kong which is issued, circulated or distributed in Hong Kong, whether the company has or has not established a place of business in Hong Kong, with the substitution, for references to section 38C, of references to section 342B.

(Added 78 of 1972 s. 18. Amended 6 of 1984 s. 259; 30 of 2004 s. 2)
[cf. 1948 c. 38 s. 422 U.K.]

Section:	342F	Criminal liability for misstatements in prospectus	E.R. 2 of 2012	02/08/2012
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- (1) Where a prospectus relating to shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) which is issued, circulated or distributed in Hong Kong after the commencement* of the Companies (Amendment) Ordinance 1992 (86 of 1992) includes any untrue statements, any person who authorized the issue, circulation or distribution of the prospectus in Hong Kong shall be liable to imprisonment and a fine, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did up to the time of the issue, circulation or distribution of the prospectus in Hong Kong believe that the statement was true.
- (2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 342B to the inclusion therein of a statement purporting to be made by him as an expert.
- (3) Subsection (1) shall not apply-
 - (a) to the Commission;
 - (b) where the relevant prospectus is authorized by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap 571), to the Commission or the recognized exchange company; or
 - (c) where the relevant prospectus is authorized by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, to the Commission or the recognized exchange controller.
(Replaced 5 of 2002 s. 407)

(Added 86 of 1992 s. 16)

Note:

* **Commencement date: 1 February 1993-see L.N. 19 of 1993.**

Section:	343	Interpretation of provisions as to prospectuses	L.N. 163 of 2013	03/03/2014
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- (1) Where any document by which any shares in or debentures of a company incorporated outside Hong Kong are offered for sale to the public would, if the company concerned had been a company within the meaning of this Ordinance, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this Part of this Ordinance, a prospectus issued by the company.
(Amended 6 of 1984 s. 259)
- (2) An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this Part of this Ordinance. (Amended 30 of 1999 s. 31)
- (2A) For the purposes of sections 342E and 342F, **untrue statement** (不真實陳述), in relation to a prospectus, includes a material omission from the prospectus. (Added 30 of 2004 s. 2)
- (2B) For the purposes of the provisions of this Part, a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included. (Added 30 of 2004 s. 2)
- (3) In this Part the expressions **shares** (股份) and **debentures** (債權證) have the same meanings as when used in relation to a company as defined in section 2(1). (Amended 30 of 2004 s. 2; 28 of 2012 ss. 912 & 920)
(Replaced 78 of 1972 s. 18)
[cf. 1948 c. 38 s. 423 U.K.]

Section:	344	(Repealed 12 of 1974 s. 150)		30/06/1997
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Part:	XIIA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	344A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Part:	XIII	Miscellaneous	E.R. 1 of 2014	03/03/2014
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(*Format changes—E.R. 1 of 2014)

Note:

* The format of Part XIII has been updated to the current legislative styles.

Section:	345	(Repealed 30 of 2004 s. 2)	L.N. 187 of 2007	14/12/2007
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Subheading repealed 30 of 2004 s. 2

Section:	346	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	346A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	346B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	347	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	348	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	348A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	348B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	348BA	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	348C	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Cross-heading repealed 28 of 2012 ss. 912 & 920

Section:	348D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	349	Penalty for false statements	E.R. 1 of 2014	03/03/2014
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Miscellaneous Offences

If any person in any return, report, certificate, balance sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and shall be liable on conviction to a fine and imprisonment: (Amended 7 of 1990 s. 2)

Provided that nothing in this section shall affect the provisions of Part V (perjury) of the Crimes Ordinance (Cap 200) or section 19, 20 or 21 of the Theft Ordinance (Cap 210).

(Replaced 6 of 1984 s. 241)
[cf. 1948 c. 38 s. 438 U.K.]

Section:	349A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	350	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	350A	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	350B	Injunctions	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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Injunctions

- (1) Where a person (*the first-mentioned person*) has, in relation to a specified corporation, engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—
 - (a) a contravention of this Ordinance;
 - (b) an attempt to contravene this Ordinance;
 - (c) aiding, abetting, counselling or procuring another person to contravene this Ordinance;
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, another person to contravene this Ordinance;
 - (e) his being in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of this Ordinance by another person; or (Amended 28 of 2012 ss. 912 & 920)
 - (f) conspiring with others to contravene this Ordinance, (Amended 28 of 2012 ss. 912 & 920)
 - (g)-(h) (Repealed 28 of 2012 ss. 912 & 920)

the court may, on the application of the Financial Secretary, or of a member or creditor of the specified corporation whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the court considers appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the court it is desirable to do so, requiring the first-mentioned person to do any act or thing.
- (2) The power of the court to grant an injunction restraining the first-mentioned person referred to in subsection (1) from engaging in the conduct mentioned in that subsection may be exercised—
 - (a) whether or not it appears to the court that he intends to engage again, or to continue to engage, in that conduct;
 - (b) whether or not he has previously engaged in that conduct; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if he engages in that conduct.
- (3) Where a person (*the first-mentioned person*) has, in relation to a specified corporation, refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the first-mentioned person is required by this Ordinance to do, the court may, on the application of the Financial Secretary, or of a member or creditor of the specified corporation whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the court considers appropriate, requiring the first-mentioned person to do that act or thing.
- (4) The power of the court to grant an injunction requiring the first-mentioned person referred to in subsection (1) or (3) to do an act or thing may be exercised—

- (a) whether or not it appears to the court that he intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
 - (b) whether or not he has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if he refuses or fails to do that act or thing.
- (5) Where the court considers appropriate, it may grant an interim injunction on such terms and conditions as it thinks fit pending determination of an application under subsection (1) or (3).
- (6) The court may discharge or vary an injunction granted under subsection (1), (3) or (5).
- (7) The court may, either in addition to or in substitution for the grant of the injunction under subsection (1) or (3), order the first-mentioned person referred to in subsection (1) or (3) to pay damages to any other person.
- (8) For the avoidance of doubt, the damages that may be ordered by the court under subsection (7) does not entitle a person to recover by way of damages any loss that is solely reflective of the loss suffered by a specified corporation which only the specified corporation is entitled to recover under the common law.

(Added 30 of 2004 s. 2)

Section:	351	Provision for punishment and offence	E.R. 1 of 2014	03/03/2014
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General Provisions as to Offences

- (1) The Twelfth Schedule has effect with respect to the way in which offences under this Ordinance are punishable on conviction. (Replaced 7 of 1990 s. 3)
- (1A) As respects an offence under a provision of this Ordinance set out in column 1 of the Twelfth Schedule-
- (a) column 2 gives a description of the general nature of the offence only and shall not be used to interpret the provision;
 - (b) column 3 shows whether the offence is punishable on conviction on indictment or on summary conviction;
 - (c) column 4 shows, subject to paragraph (d), the maximum punishment by way of fine or imprisonment under this Ordinance which may be imposed on a person convicted of the offence;
 - (d) column 5 shows in the case of an offence for which there is an entry in that column that a person convicted of the offence after continued default, refusal or contravention is liable to a default fine: that is to say, he is liable, in addition to the punishment that may be imposed under paragraph (c), to the fine set out in that column for each day on which the default, refusal or contravention is continued. (Replaced 7 of 1990 s. 3)
- (1B) (Repealed 7 of 1990 s. 3)
- (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. (Amended 28 of 2003 s. 114)

(Amended 6 of 1984 s. 244)

Section:	351A	Limitation on commencement of proceedings	E.R. 1 of 2014	03/03/2014
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- (1) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), an information or complaint relating to an offence under this Ordinance may be tried if it is laid or made, as the case may be, at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Secretary for Justice to justify the proceedings comes to his knowledge.
- (2) For the purposes of this section, a certificate of the Secretary for Justice as to the date on which evidence sufficient to justify proceedings came to his knowledge shall be conclusive evidence.
- (3) This section shall not apply in relation to an offence committed before the coming into operation* of the Companies (Amendment) Ordinance 1972 (78 of 1982).

(Added 78 of 1972 s. 20. Amended L.N. 362 of 1997)

Note:

* Operation date: 1 March 1973.

Section:	351B	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	352	Application of fines	E.R. 1 of 2014	03/03/2014
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The court or magistrate imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Ordinance shall, notwithstanding anything in any other Ordinance, be paid into the general revenue.

(Amended 6 of 1984 s. 246)
[cf. 1929 c. 23 s. 367 U.K.]

Section:	353	(Repealed 6 of 1984 s. 247)		30/06/1997
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Section:	354	Saving as to private prosecutors	E.R. 1 of 2014	03/03/2014
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Nothing in this Ordinance relating to the institution of criminal proceedings by the Secretary for Justice shall be taken to preclude any person from instituting or carrying on any such proceedings.

(Amended L.N. 362 of 1997)
[cf. 1929 c. 23 s. 368 U.K.]

Section:	355	Saving for privileged communications	E.R. 1 of 2014	03/03/2014
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Where proceedings are instituted under this Ordinance against any person by the Secretary for Justice nothing in this Ordinance shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

(Amended L.N. 362 of 1997)
[cf. 1929 c. 23 s. 369 U.K.]

Section:	356	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Legal Proceedings

(Amended 28 of 2012 ss. 912 & 920)

Section:	357	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	358	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	359	Power to enforce orders	E.R. 1 of 2014	03/03/2014
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Orders made by the court under this Ordinance may be enforced in the same manner as orders made in an action pending therein.

(Amended 6 of 1984 s. 249)
[cf. 1929 c. 23 s. 373 U.K.]

Section:	359A	Power to make regulations	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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General provisions as to Chief Executive in Council

(Amended 23 of 1999 s. 3)

(1) The Chief Executive in Council may make regulations in respect of any matter required or permitted to be prescribed by the Chief Executive in Council under this Ordinance. (Amended 23 of 1999 s. 3; 27 of 2001 s. 7)

(2)-(6) (Repealed 28 of 2012 ss. 912 & 920)

(Added 6 of 1984 s. 250)

Section:	360	Power to amend Schedules*	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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(1)-(2) (Repealed 28 of 2012 ss. 912 & 920)

(3) (Repealed 3 of 1997 s. 54)

(3A) (Repealed 28 of 2012 ss. 912 & 920)

(4)-(5) (Repealed 28 of 2012 ss. 912 & 920)

(6) The Commission may, by order published in the Gazette, amend the Third, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first or Twenty-second Schedule. (Added 30 of 2004 s. 2)

(7) Where the Commission proposes to make an order under subsection (6), it shall publish a draft of the proposed order, in such manner as it considers appropriate, for the purpose of inviting representations on the proposed order by the public. (Added 30 of 2004 s. 2)

(8) Where the Commission makes any order under subsection (6) after a draft is published under subsection (7) in relation to the 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 order is made with modifications which in the opinion of the Commission result in the 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 inappropriate or unnecessary 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)

(10) (Repealed 28 of 2012 ss. 912 & 920)

(Replaced 6 of 1984 s. 250)

[cf. 1948 c. 38 s. 454 U.K.]

Note:

* (Amended 28 of 2012 ss. 912 & 920)

Part:	XIIIA	Prevention of Evasion of the Societies Ordinance	E.R. 1 of 2014	03/03/2014
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(Part XIIIA added 6 of 1984 s. 251)

(*Format changes—E.R. 1 of 2014)

Note:

* The format of Part XIIIA has been updated to the current legislative styles.

Section:	360A	(Repealed 30 of 1999 s. 34)	L.N. 239 of 1999	11/11/1999
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Section:	360B	Power of Chief Executive in Council to order Registrar to refuse registration if satisfied that a company is being formed to evade the Societies Ordinance	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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(1) If the Registrar suspects that the relevant documents relate to a company which is being formed with the object of circumventing- (Amended 28 of 2012 ss. 912 & 920)

(a) the refusal of the Societies Officer to register or to exempt from registration a society under the Societies

Ordinance (Cap 151); or

- (b) the cancellation by the Societies Officer of the registration or exemption from registration of a society registered or exempted under the Societies Ordinance (Cap 151); or
- (c) the prohibition of the operation or continued operation of a society by the Secretary for Security under section 8 of the Societies Ordinance (Cap 151),

or for the purpose of otherwise evading or defeating the provisions of the Societies Ordinance (Cap 151) or anything done thereunder, it shall be lawful for him to withhold registration of the same pending the receipt of the instructions of the Chief Executive in Council with respect thereto. In the event of the Chief Executive in Council being satisfied that the company is being formed with any such object or for any such purpose, he may order the Registrar to refuse registration of the relevant documents. Despite section 15 of the pre-amended Ordinance or section 67 of the Companies Ordinance (Cap 622), the Registrar must refuse registration of the relevant documents on receipt of the order. (Amended 75 of 1992 s. 33; 118 of 1997 s. 18; 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920)

(2) In this section-

relevant documents (有關文件) means-

- (a) the memorandum of association and articles of association of the company delivered to the Registrar in accordance with section 15 of the pre-amended Ordinance; or
- (b) the incorporation form and articles of association of the company delivered to the Registrar in accordance with section 67 of the Companies Ordinance (Cap 622). (Added 28 of 2012 ss. 912 & 920)

Section:	360C	Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) If the Chief Executive in Council is satisfied that a company formed and registered under the Companies Ordinance (Cap 622) or any former Companies Ordinance would, if it were a society in respect of which the Societies Ordinance (Cap 151) applied, be liable to have its registration or exemption from registration cancelled under section 5D or its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance, the Chief Executive in Council may order the Registrar of Companies to strike such company off the Companies Register. (Amended 75 of 1992 s. 34; 118 of 1997 s. 19; 23 of 1999 s. 3)
- (2) The Registrar shall thereupon strike the name of the company off the register, and shall publish notice thereof in the Gazette, and on such publication the company shall be dissolved:
Provided that the liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.
- (3) A copy of such notice shall be sent to such company, and may either be sent by post or be delivered by hand addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, the notice may be sent or delivered to each of the founder members, addressed to the founder member at the address mentioned in the memorandum of association or incorporation form, as the case may be, but if none of such addresses is available or if for any other reason the Registrar considers it unlikely that any notice sent in pursuance of this subsection will come to the knowledge of the addressee, it shall be sufficient compliance with this subsection that notice in the Gazette shall have been published in accordance with subsection (2). (Amended 30 of 2004 s. 2)

(Amended 28 of 2012 ss. 912 & 920)

Section:	360D	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Section:	360E	Vesting and disposal of property of company struck off	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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- (1) Where a company is struck off the register and dissolved under section 360C, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall vest in the Official Receiver.

(2) The Official Receiver shall with all due dispatch wind up the affairs of the company, and after realizing the said property and rights shall apply the sum so realized-

First, in paying all fees, costs, charges and expenses properly incurred in preserving, realizing or getting in the said property and rights.

Next, in paying all necessary fees, costs, charges and expenses incurred by the Official Receiver in and upon the winding up of the affairs of the company.

Next, in paying to the Government a sum equal to the fees which the Official Receiver could lawfully have charged if he had acted as liquidator of the company in a winding up thereof by the court.

Next, in paying the creditors of the company who shall have proved their debts within such time as shall have been limited by him not being less than 1 month from the date of publication of notice thereof in the Gazette and 2 or more local newspapers of which at least 1 shall be a Chinese newspaper, according to their respective rankings and priorities as if the company had been a company being wound up by the court by virtue of a winding up order dated the day of its dissolution under section 360C.

Next, in paying or distributing the surplus to or among the persons entitled thereto under the company's articles. (Amended 28 of 2012 ss. 912 & 920)

Section:	360F	Provisions applicable to winding up of company struck off under section 360C	E.R. 1 of 2014	03/03/2014
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Expanded Cross Reference:

360G, 360H, 360I, 360J, 360K, 360L, 360M

The provisions contained in sections 360G to 360M shall apply to the winding up by the Official Receiver of the affairs of a company struck off the register of companies under section 360C. <* Note - Exp. X-Ref.: Sections 360G, 360H, 360I, 360J, 360K, 360L, 360M *>

Section:	360G	Certain sections to apply	E.R. 1 of 2014	03/03/2014
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Expanded Cross Reference:

170, 171, 172, 173, 174, 175, 263, 264, 264A, 264B, 265, 266, 266A, 266B, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 281, 282, 283

Sections 170 to 175, 190, 211, 221, 263 to 277, 281 to 283 and 285 shall apply mutatis mutandis as if on the day of the dissolution of the company under section 360C an order had been made for the winding up of the company by the court and as if the Official Receiver were the liquidator thereof. <* Note - Exp. X-Ref.: Sections 170, 171, 172, 173, 174, 175, 263, 264, 264A, 264B, 265, 266, 266A, 266B, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 281, 282, 283 *>

Section:	360H	Calls on contributories	E.R. 1 of 2014	03/03/2014
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The Official Receiver shall have the same rights and powers to settle a list of the contributories of the company, to make and enforce calls on the contributories on the list so settled, and to compromise calls and liabilities to calls, as if the company were being wound up by the court and he were the liquidator thereof.

Section:	360I	Continuation of pending legal proceedings	E.R. 1 of 2014	03/03/2014
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Where any legal proceeding instituted by or against a company is pending at the date of its dissolution, such proceeding may be continued by or against the Official Receiver as representing such company.

Section:	360J	Obstruction of Official Receiver	E.R. 1 of 2014	03/03/2014
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Every person who-

- (a) without lawful excuse refuses to hand over to the Official Receiver or any person authorized by him in that behalf any key, safe, document, account book, or other thing of any nature whatsoever belonging to the

company of which he may have the custody or possession; or
 (b) without lawful excuse in any way obstructs the Official Receiver or any person authorized by him in that behalf in taking possession of any premises occupied by the company prior to its dissolution, shall be guilty of an offence and shall be liable on conviction to a fine and imprisonment. (Amended 7 of 1990 s. 2)

Section:	360K	Control of Official Receiver	E.R. 1 of 2014	03/03/2014
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- (1) Subject to the provisions of this Part, the Official Receiver shall conform to any directions which may be given to him by the Chief Executive for the purposes of this Part. (Amended 23 of 1999 s. 3)
- (2) The Official Receiver shall with the permission of the Chief Executive be entitled to apply by originating summons to the court for directions on any matter arising out of the winding up. (Amended 23 of 1999 s. 3)
- (3) Any such application shall be heard and determined in such manner as the court may direct, and it shall be lawful for the court to hear such parties and persons as it may think fit.
- (4) Without prejudice to the generality of subsection (3) the court may if it sees fit direct that the proceedings or any part thereof be heard in camera.
- (5) If any person is aggrieved by any act or decision of the Official Receiver, that person may apply by originating summons to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Section:	360L	Audit of Official Receiver's accounts	E.R. 1 of 2014	03/03/2014
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- (1) The accounts of the Official Receiver with respect to the winding up shall be audited in such manner as the Chief Executive may direct, and the cost of such audit shall be charged as an expense of the winding up. (Amended 23 of 1999 s. 3)
- (2) In the event of the accounts being audited by a public servant there shall be paid to the Government in respect of such audit a sum equal to the fee which would have been chargeable on the audit of the Official Receiver's accounts if the winding up had been a winding up by the court.

Section:	360M	Protection of Official Receiver	E.R. 1 of 2014	03/03/2014
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- (1) The Official Receiver shall not incur any personal liability in respect of the winding up of any company under this Part.
- (2) No legal proceeding of any kind whatsoever, civil or criminal, shall without the permission of the Chief Executive be brought against the Official Receiver in respect of any act or omission connected in any manner whatsoever with any winding up under this Part. (Amended 23 of 1999 s. 3)

Section:	360N	Non-Hong Kong Companies*	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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If the Chief Executive in Council is satisfied that a non-Hong Kong company would, if it were a society in respect of which the Societies Ordinance (Cap 151) applied, be liable to have- (Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920)

- (a) its registration or exemption from registration cancelled under section 5D of the Societies Ordinance (Cap 151); or
- (b) its operation or continued operation prohibited by the Secretary for Security under section 8 of the Societies Ordinance (Cap 151),

the Chief Executive in Council may order the company to cease to carry on business within Hong Kong, and such company shall thereupon cease to carry on business within Hong Kong and in the case of paragraph (b), the company is deemed to be an unlawful society within the meaning of and for the purposes of the Societies Ordinance (Cap 151): (Amended 75 of 1992 s. 35; 118 of 1997 s. 20; 23 of 1999 s. 3)

Provided that a person shall not be liable to prosecution for an offence against the Societies Ordinance (Cap 151) by reason only that he is a member of a company which has been ordered to cease to carry on business under this section.

Note:

* (Amended 28 of 2012 ss. 912 & 920)

Part:	XIV	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	361	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	362	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	363	(Repealed 6 of 1984 s. 252)		30/06/1997
Section:	364	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	365	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	366	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Section:	367	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	1	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	2	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	3	Matters to be Specified in Prospectus and Reports to be set out therein	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014

[sections 2B, 38, 38A, 38AA, 38D, 42, 342, 342A, 342AA, 342C & 360 & 2nd, 4th, 20th & 21st Schedules]
(Amended 12 of 2005 s. 15; 8 of 2011 s. 20)

Part I

Matters to be Specified

1. The general nature of the business of the company, and if the company carries on 2 or more activities which are material having regard to profits or losses, assets employed or any other factor, information as to the relative importance of each such activity.
2. The authorized share capital or maximum number of shares issuable under the articles and the description and nominal value (if any) of the shares into which the authorized share capital is divided, the amount of share capital issued or agreed to be issued, and the amount paid up on the shares which have been issued.
(Amended 28 of 2012 ss. 912 & 920)
3. Sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the

time of the issue of the prospectus, taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them.

(Amended 30 of 2004 s. 2)

4. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
5. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
6. The names, descriptions and addresses of the directors or proposed directors.
7. Where shares are offered to the public for subscription, particulars as to-
 - (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters-
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - (iv) working capital;but, so long as the general purpose of the issue is clearly stated and the issue is fully underwritten, this sub-paragraph need not be complied with, and
 - (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
8. The date and time of the opening of the subscription lists.
9. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.
10. The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say-
 - (a) the period during which it is exercisable;
 - (b) the price to be paid for shares or debentures subscribed for under it;
 - (c) the consideration (if any) given or to be given for it or for the right to it;
 - (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.
11. The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.
12. (1) As respects any property to which this paragraph applies-
 - (a) the names and addresses of the vendors;
 - (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than 1 separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;
 - (c) short particulars of any transaction relating to the property completed within the 2 preceding years in which any vendor of the property to the company or any person who is, or was at the time of the

transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

- (2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property-
 - (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
 - (b) as respects which the amount of the purchase money is not material.
13. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 12 applies, specifying the amount, if any, payable for goodwill.
14. The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.
15. The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.
16. Any amount or benefit paid or given within the 2 preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.
17. The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus; and a statement that a copy of every such material contract has been delivered to the Registrar for registration.
18. The names and addresses of the auditors, if any, of the company, and, if the prospectus invites the public to subscribe for debentures which are stated in the prospectus to be guaranteed, the names and addresses of the auditors, if any, of the guarantor corporation.
19. Full particulars of the nature and extent of the interest, if any, 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.
20. If the prospectus invites the public to subscribe for shares in the company and 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.
21. 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 length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.
22. The contents or a sufficient summary of the contents of the articles of the company with regard to any borrowing powers exercisable by the directors and the manner of variation of such powers.
23. Particulars of any bank overdrafts or other similar indebtedness of the company and its subsidiaries, if any, as at the latest practicable date or, if there are no bank overdrafts or other similar indebtedness, a statement to that effect.

24. Particulars of any hire purchase commitments, guarantees or other material contingent liabilities of the company and its subsidiaries, if any, or, if there are none such, a statement to that effect.
25. Particulars of the authorized debentures of the company and its subsidiaries, if any, the amount issued and outstanding or agreed to be issued, or if no debentures are outstanding a statement to that effect.
26. If the prospectus invites the public to subscribe for debentures of the company-
- (a) the rights conferred upon the holders thereof, including rights in respect of interest and redemption, and particulars of the security, if any, therefor;
 - (b) the designation of such debentures which shall incorporate-
 - (i) in the case of debentures not secured by a charge on assets of the company-
 - (A) the word "unsecured" if the designation is in English;
 - (B) the expression in Chinese "無保證" if the designation is in Chinese; or
 - (C) both such word and expression respectively if the designation is both in English and Chinese; and
 - (ii) in the case of debentures secured to a substantial extent by a specific mortgage or charge-
 - (A) the word "mortgage" if the designation is in English;
 - (B) the expression in Chinese "按揭" if the designation is in Chinese; or
 - (C) both such word and expression respectively if the designation is both in English and Chinese; (Replaced 3 of 1997 s. 57)
 - (c) particulars of any guarantee subsisting in respect of the debentures, including the name and address of the guarantor, and the designation or any description of the debentures shall only incorporate the word "guaranteed" or the expression in Chinese "獲擔保" if they are guaranteed to a substantial extent by a legally enforceable guarantee. (Replaced 3 of 1997 s. 57)
27. A statement as to the gross trading income or sales turnover (as may be appropriate) of the company during each of the 3 financial years immediately preceding the issue of the prospectus including an explanation of the method used for the computation of such income or turnover, and a reasonable break-down between the more important trading activities; but a bank, discount house or other company whose business is in the opinion of the directors of a character that such a statement is either not practicable or not of value may instead include an explanation of the absence of such a statement.
- (Amended 86 of 1992 s. 18; 30 of 2004 s. 2)
28. If the prospectus offers shares in the company for sale to the public-
- (a) the names, addresses and descriptions of the vendor or vendors of the shares, or, if there are more than 10 vendors, the like particulars of the 10 principal vendors and a statement of the number of other vendors;
 - (b) particulars of any beneficial interest possessed by any director of the company in any shares so offered for sale.
29. The name, date and country of incorporation, whether public or private (if applicable), the general nature of the business, the issued capital and the proportion thereof held or intended to be held, of every company the whole of the capital of which or a substantial proportion thereof is held or intended to be held, or whose profits or assets make or will make a material contribution to the figures in the auditors' report or to the next financial statements of the company.
- (Amended 28 of 2012 ss. 912 & 920)
30. A statement of the persons holding or beneficially interested in any substantial part of the share capital of the company and the amounts of the holdings in question.

Part II

Reports to be set out

31. (1) A report by the auditors of the company with respect to-
- (a) profits and losses and assets and liabilities of the company in accordance with sub-paragraph (2) or (3), as the case required; and
 - (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,
- and, if no financial statements have been prepared in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.
- (2) If the company has no subsidiaries, the report shall-
- (a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the financial statements of the company were prepared.
- (3) If the company has subsidiaries, the report shall-
- (a) so far as regards profits and losses, deal separately with the company's (other than subsidiaries) profits or losses as provided by sub-paragraph (2) and, in addition, deal either-
 - (i) as a whole with the combined profits or losses of its subsidiaries; or
 - (ii) individually with the profits or losses of each subsidiary,
 or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and with the combined profits or losses of its subsidiaries; and
 - (b) so far as regards assets and liabilities, deal separately with the company's (other than subsidiaries) assets and liabilities as provided by sub-paragraph (2) and, in addition, deal either-
 - (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or
 - (ii) individually with the assets and liabilities of each subsidiary,
 and shall indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.
- (Replaced 30 of 2004 s. 2. Amended 28 of 2012 ss. 912 & 920)
32. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon-
- (a) the profits or losses of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and (Amended 86 of 1992 s. 18)
 - (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)
33. (1) if-
- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking; and
 - (b) by reason of that acquisition or anything to be done in consequence thereof or in connexion therewith that undertaking will become a subsidiary of the company,
- a report made by accountants (who shall be named in the prospectus) upon-
- (i) the profits or losses of the other undertaking in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and (Amended 86 of 1992 s. 18)
 - (ii) the assets and liabilities of the other undertaking at the last date to which the financial statements of the undertaking were prepared. (Amended 28 of 2012 ss. 912 & 920)
- (2) The said report shall-
- (a) indicate 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; and
- (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)

Schedule:	4	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	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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[sections 2B & 43]

(Amended 12 of 2005 s. 16)

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

Amount (if any) of above capital which consists of redeemable shares.

The earliest date on which the company has power to redeem these shares.

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.

The consideration for the intended issue of those shares and

\$

Shares of \$ each.

" " "

" " "

Shares of \$ each.

1. shares of \$ fully paid.

2. shares upon which \$ per share credited as paid.

3. debenture \$

4. Consideration

debentures.

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.

Period during which option is exercisable.

Price to be paid for shares or debentures subscribed for or acquired under option.

Consideration for option or right to option.

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.

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.

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

Rate of the commission

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.

Consideration for the payment

Any other benefit given or intended to be given to any promoter.

Consideration for giving of benefit.

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

1. shares of \$
and debentures of \$

2. Until

3.

4. Consideration-

5. Names and addresses-

Total purchase price

\$

Cash \$

Shares \$

Debentures \$

Goodwill \$

Amount paid.

Amount payable.

Rate per cent.

\$

Name of promoter.

Amount \$

Consideration-

Name of promoter-

Nature and value of

benefit-

Consideration-

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)

Schedule:	5	(Repealed 3 of 1997 s. 58)	30/06/1997
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Schedule:	6	(Repealed 3 of 1997 s. 58)		30/06/1997
Schedule:	7	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	8	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	9	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	10	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	11	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
Schedule:	12	Punishment of Offences under this Ordinance	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014

Expanded Cross Reference:
342, 342A, 342B, 342C

[section 351]

Section creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (if applicable)
38(1B)	Issuing a company prospectus that does not comply with section 38(1) and (1A)	Summary	level 5	-
38(3)	Issuing a company prospectus that does not comply with section 38	Summary	level 6	-
38B(3)	Advertising an abstract from or an abridged version of a company prospectus	Summary	level 6	-
38C(2)	Issuing a company prospectus with an expert's statement in it, he not having given his consent	Summary	level 6	-
38D(8)	Issuing a company prospectus without delivering a copy to the Registrar or without the requisite endorsements (Amended 86 of 1992 s. 20)	Summary	level 6	\$300
39A(3)	Amendment of prospectus consisting of one document not done in compliance with Part 1 of the Twentieth Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
39B(4)	Amendment of prospectus consisting of more than one document not done in	Summary	level 6	-

	compliance with Part 1 of the Twenty-first Schedule (Added 30 of 2004 s. 2)				
40A(1)	Authorizing the issue of a prospectus containing an untrue statement	On indictment	\$700000 and 3 years	-	
			\$150000 and 12 months	-	
43(4)	Allotting shares before the 3rd day after delivering a statement in lieu of prospectus to the Registrar	Summary	level 6	-	
43(5)	Authorizing a statement in lieu of prospectus under section 43(1) containing an untrue statement	On indictment	\$350000 and 2 years	-	
		Summary	\$150000 and 12 months	-	
44A(4)	Allotting shares before the 3rd day after the issue of a prospectus	Summary	level 6	-	
44B(3)	Company failing to keep money in separate bank account when received under a prospectus stating that stock exchange listing is being applied for	Summary	level 5	-	
168M	Person contravening a disqualification order (Added 30 of 1994 s. 12. Amended E.R. 1 of 2014)	On indictment	Level 6 and 2 years	-	
		Summary	Level 4 and 6 months	-	
190(5)	Person failing to comply with requirements to give information, etc., to liquidator under section 190 (Amended 46 of 2000 s. 39)	Summary	level 5	\$300	
227(3)	Liquidator failing to deliver dissolution order to the Registrar	Summary	level 5	\$300	
228A(4)	Director signing a winding-up statement without having reasonable grounds for the opinion that the company cannot by reason of its liabilities continue its business, or to consider that the winding up should be commenced under section 228A because it is not reasonably practicable for it to be commenced under another section of the Ordinance (Added 28 of 2003 s. 119)	Summary	level 5 and 6 months	-	
228A(6) (relating to subsection (5)(b))	Director failing to appoint a provisional liquidator forthwith after delivery of winding-up statement to the Registrar (Added 28 of 2003 s. 119)	Summary	level 5	-	

228A(6) (relating to subsection (5)(c))	Director failing to cause meetings of the company or creditors to be summoned within 28 days after delivery of winding-up statement (Added 28 of 2003 s. 119)	Summary	level 5	-
228A(13) (relating to subsection (10))	Provisional liquidator failing to deliver to the Registrar the notice of appointment required under section 228A(10) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
228A(13) (relating to subsection (11)(a))	Person ceasing to act as provisional liquidator failing to publish in the Gazette the notice required under section 228A(11)(a) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
228A(13) (relating to subsection (11)(b))	Person ceasing to act as provisional liquidator failing to deliver to the Registrar the notice required under section 228A(11)(b) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
228A(13) (relating to subsection (12))	Provisional liquidator failing to deliver to the Registrar the notice of change of particulars required under section 228A(12) (Added 28 of 2003 s. 119)	Summary	level 3	\$200
229(2)	Company failing to advertise in the Gazette notice of resolution to wind up voluntarily	Summary	level 3	\$300
233(3)	Director signing a certificate that company being wound up voluntarily can meet its debts within the time set out in the certificate without having reasonable grounds to do so (Amended 28 of 2003 s. 119)	Summary	level 5 and 6 months	-
237A(3)	Liquidator failing to call a meeting on forming the opinion that a company in voluntary liquidation will not be able to meet its debts within the time stated in the certificate of solvency issued under section 233 (Amended 28 of 2003 s. 119)	Summary	level 3	-
238(2)	Liquidator failing to call a general meeting at the end of any year	Summary	level 3	-
239(3)	Liquidator failing to send the Registrar a copy of accounts, etc., on completion of the winding up	Summary	level 3	\$300

239(5)	Person failing to deliver an office copy of an order under section 239 to the Registrar for registration	Summary	level 3	\$300
239(6)	Liquidator failing to call a final general meeting under section 239	Summary	level 3	-
241(6)	Company, etc., failing to comply with the requirements to call creditors' meeting, etc., after a meeting which proposes to wind up the company voluntarily	Summary	level 5	-
247(2)	Liquidator failing to call annual meeting of creditors	Summary	level 3	-
248(3)	Liquidator failing to send copy account or return of holding of final meeting to the Registrar	Summary	level 3	\$300
248(5)	Person failing to deliver an office copy of an order under section 248 to the Registrar for registration	Summary	level 3	\$300
248(6)	Liquidator failing to call a general meeting of the company or of creditors as required by section 248	Summary	level 3	-
253(4) (relating to subsection (1)(a))	Liquidator failing to publish in the Gazette the notice of appointment required under section 253(1)(a) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (1)(b))	Liquidator failing to deliver to the Registrar the notice of appointment required under section 253(1)(b) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (2)(a))	Person ceasing to act as liquidator failing to publish in the Gazette the notice required under section 253(2)(a) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (2)(b))	Person ceasing to act as liquidator failing to deliver to the Registrar the notice required under section 253(2)(b) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
253(4) (relating to subsection (3))	Liquidator failing to deliver to the Registrar the notice of change of particulars required under section 253(3) (Added 28 of 2003 s. 119)	Summary	level 3	\$300
271(1) (relating to paragraph (o))	Officer, etc., failing to comply with section 271 (offences by officers of companies in	On indictment Summary	5 years 2 years	- -

	liquidation)				
271(1) (relating to any other paragraph)	Officer, etc., failing to comply with section 271 (offences by officers of companies in liquidation)	On indictment	\$150000 and 2 years	-	
		Summary	level 5 and 6 months	-	
272	Officer, etc., falsifying, etc., books, etc.	On indictment	\$150000 and 2 year	-	
		Summary	level 5 and 6 months	-	
273	Officer acting with intent to defraud creditors by giving, etc., or concealing, etc., property of company in liquidation	On indictment	\$150000 and 2 years	-	
		Summary	level 5 and 6 months	-	
274(1)	Officer failing to keep books for the 2 years prior to winding up of company	On indictment	\$150000 and 2 years	-	
		Summary	level 5 and 6 months	-	
275(3)	Person being a party to carrying on the business of a company with intent to defraud creditors	On indictment	Fine (unlimited) and 5 years	-	
		Summary	\$150000 and 12 months	-	
278	Undischarged bankrupt or body corporate acting as liquidator	Summary	\$150000	-	
278A	Person corruptly inducing appointment of liquidator	Summary	\$150000	-	
280(2)	Company, etc., failing to notify on invoice, etc., that it is in liquidation	Summary	level 3	-	
283(4)	Person contravening general rules made for the destruction, etc., of books, etc., of liquidated company	Summary	level 3	-	
284(3)	Liquidator failing to send prescribed particulars with respect to the proceedings in and position of the liquidation during the liquidation to the Registrar	Summary	level 3		\$700
290(2)	Person failing to deliver an office copy of an order under section 290 to the Registrar for registration	Summary	level 3		\$300
297(2)	Body corporate acting as a receiver	Summary	level 5	-	
297A	Undischarged bankrupt acting as a receiver	On indictment	\$150000 and 2 years	-	
		Summary	level 5 and 6 months	-	
299(2)	Company, etc., authorizing, etc., the issue of invoices, etc., without reference to its being in receivership, etc.	Summary	level 3	-	
300A(7)	Receiver failing to give notices, etc., as required under section 300A	Summary	level 3		\$300

300B(5)	Persons defaulting in complying with requirements of section 300B (special provisions as to statement submitted to receiver)	Summary	level 3	\$300
301(2)	Receiver, etc., failing to deliver accounts to the Registrar	Summary	level 3	\$300
342CA(3)	Amendment of prospectus consisting of one document not done in compliance with Part 2 of the Twentieth Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
342CB(4)	Amendment of prospectus consisting of more than one document not done in compliance with Part 2 of the Twenty-first Schedule (Added 30 of 2004 s. 2)	Summary	level 6	-
342D	Person responsible for issue, etc., of prospectus, etc., contravening sections 342 to 342C <* Note - Exp. X-Ref.: Sections 342, 342A, 342B, 342C *>	Summary	\$150000	-
342F(1)	Authorizing the issue, circulation or distribution in Hong Kong of a prospectus (containing an untrue statement) relating to shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) (Added 86 of 1992 s. 20. Amended 30 of 2004 s. 2; 28 of 2012 ss. 912 & 920)	On indictment Summary	\$550000 and 3 years \$150000 and 12 months	- -
349	Person making a false statement	Summary	level 6 and 6 months	-
360J	Person obstructing Official Receiver	Summary	\$150000 and 6 months	-
(Twelfth Schedule added 7 of 1990 s. 4. Amended 77 of 1991 s. 8; 30 of 1994 s. 12; 84 of 1995 s. 8; L.N. 306 of 1996; 3 of 1997 s. 62; 28 of 2003 s. 119; 18 of 2006 s. 66; 28 of 2012 ss. 912 & 920)				
(Format changes—E.R. 1 of 2014)				

Schedule:	13	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Schedule:	14	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Schedule:	15	Matters for Determining Unfitness of Directors	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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[section 168K]

Part I

Matters Applicable in all Cases

1. Any misfeasance or breach of any fiduciary or other duty by the director in relation to the company.
2. Any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company.
3. The extent of the director's responsibility for any failure by the company to comply with—
 - (a) any of the following provisions of the pre-amended Ordinance—
 - (i) section 81;
 - (ii) section 95;
 - (iii) section 96;
 - (iv) section 107;
 - (v) section 109;
 - (vi) section 119A;
 - (vii) section 121;
 - (viii) section 158;
 - (ix) section 158A; and
 - (b) any of the following provisions of the Companies Ordinance (Cap 622)—
 - (i) section 335;
 - (ii) section 336;
 - (iii) section 341;
 - (iv) section 342;
 - (v) section 373;
 - (vi) section 374;
 - (vii) section 377;
 - (viii) section 619;
 - (ix) section 627;
 - (x) section 628;
 - (xi) section 630;
 - (xii) section 641;
 - (xiii) section 642(1);
 - (xiv) section 643;
 - (xv) section 645;
 - (xvi) section 648;
 - (xvii) section 649(1);
 - (xviii) section 650;
 - (xix) section 652;
 - (xx) section 662; and
 - (xxi) section 664.

(Amended 28 of 2012 ss. 912 & 920)
4. The extent of the director's responsibility for any failure by the directors of the company to comply with—
 - (a) sections 122 and 129B of the pre-amended Ordinance; and
 - (b) sections 387 and 429 of the Companies Ordinance (Cap 622).

(Amended 28 of 2012 ss. 912 & 920)

Part II

Matters Applicable where Company has become Insolvent

1. The extent of the director's responsibility for the causes of the company becoming insolvent.
2. The extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part).
3. The extent of the director's responsibility for the company entering into any transaction or giving any preference, being a transaction or preference liable to be set aside under section 182 or 266.
4. The extent of the director's responsibility for any failure by the directors of the company to comply with section 241.
5. Any failure by the director to comply with any obligation imposed on him by or under any of the following provisions—
 - (a) section 190;
 - (b) section 211;
 - (c) section 228A;
 - (d) section 241; (Amended 3 of 1997 s. 64)
 - (da) section 274; and (Added 3 of 1997 s. 64)
 - (e) section 300A.

(Fifteenth Schedule added 30 of 1994 s. 13)
(Format changes—E.R. 1 of 2014)

Schedule:	16	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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Schedule:	17	Offers Specified for the Purposes of Paragraph (b)(ii) of the Definition of Prospectus in Section 2(1) of this Ordinance	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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[sections 2, 38, 38AA, 43,
48A, 342, 342AA &
360 & 18th Schedule]
(Amended 8 of 2011 s. 21)

Part 1

List of Offers, etc. Not Falling within Definition

1. An offer to professional investors within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571)(including professional investors falling within paragraph (j) of the definition of *professional investor* in that section).
2. An offer—
 - (a) to not more than 50 persons; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
3. An offer—
 - (a) in respect of which the total consideration payable for the shares or debentures concerned shall not exceed the amount specified in Part 2, or its equivalent in another currency; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

4. An offer—
 - (a) in respect of which the minimum denomination of, or the minimum consideration payable by any person for, the shares or, in the case of debentures, the minimum principal amount to be subscribed or purchased, is not less than the amount specified in Part 3, or its equivalent in another currency; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
5. An offer in connection with an invitation made in good faith to enter into an underwriting agreement.
6. An offer in connection with a takeover or merger or a share buy-back which is in compliance with the Codes on Takeovers and Mergers and Share Buy-backs issued by the Commission as in force from time to time.
(Amended 28 of 2012 ss. 912 & 920)
7. An offer of shares in a company—
 - (a) made—
 - (i) for no consideration, to any or all holders of shares in the company; or
 - (ii) as an alternative to a dividend or other distribution, to all holders of shares of a particular class in the company, provided the offer is of fully paid-up shares of the same class; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
8. An offer—
 - (a) of shares in or debentures of a company;
 - (b) to persons who are qualifying persons in respect of the company referred to in paragraph (a) or of another company which is a member of the same group of companies as the company referred to in that paragraph;
 - (c) by—
 - (i) the company referred to in paragraph (a);
 - (ii) another company which is a member of the same group of companies as the company referred to in paragraph (a); or
 - (iii) the trustees—
 - (A) of a trust established by any one or more of the companies mentioned in subparagraphs (i) and (ii); and
 - (B) holding the shares or debentures the subject of the offer;
 - (d) on terms that the only persons who can acquire the shares or debentures are the qualifying persons to whom they are offered or, if the terms of the offer so permit, any qualifying person; and
 - (e) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
9. An offer by—
 - (a) a charitable institution or trust of a public character mentioned in section 88 of the Inland Revenue Ordinance (Cap 112); or
 - (b) an educational establishment within the meaning of section 2(1) of the Sex Discrimination Ordinance (Cap 480),
 where—
 - (c) the proceeds of the offer will be applied towards the objectives of the charitable institution or trust, or educational establishment, as the case may be; and
 - (d) the offer contains a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.
10. An offer—
 - (a) to members, or applicants for membership, of a club or association—
 - (i) who can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association; and
 - (ii) where the proceeds of the offer are to be applied for purposes which can reasonably be regarded as concerning the affairs of the club or association; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

11. An offer—
 - (a) in respect of—
 - (i) an exchange of shares in the same company which does not result in an increase in the issued share capital of the company; or
 - (ii) an exchange of debentures of the same company which does not result in an increase in the aggregate principal amount outstanding under the debentures; and
 - (b) containing a statement specified in Part 3 of the Eighteenth Schedule to this Ordinance.

12. An offer—
 - (a) in connection with a collective investment scheme authorized under section 104 of the Securities and Futures Ordinance (Cap 571); and
 - (b) in connection with which the issue of each advertisement, invitation or document has been authorized under section 105 of the Securities and Futures Ordinance (Cap 571).

Part 2

Amount Specified for the Purposes of Section 3 of Part 1

\$5000000

Part 3

Amount Specified for the Purposes of Section 4 of Part 1

\$500000

Part 4

Interpretation of Part 1

1. Any reference to an offer in Part 1—
 - (a) includes an offer of any right, option or interest in or in relation to the shares or debentures the subject of the offer;
 - (b) does not include the offer to the extent that it is made to persons who are outside Hong Kong.

2. A prospectus, notice, circular, brochure, advertisement, or other document, still falls within Part 1 if it falls entirely within any combination of any of sections 1, 2, 5, 6, 7, 8, 9, 10, 11 or 12 of Part 1.

3. For the purposes of sections 2 and 3 of Part 1, an offer is to be taken together with any other offer of the same class of shares or debentures—
 - (a) which was made by the same person;
 - (b) which was open at any time within the period of 12 months ending with the date on which the first-mentioned offer is first made; and
 - (c) the document issued in respect of which was not a prospectus by virtue of either of those sections being satisfied.

4. For the purposes of section 2 of Part 1—
 - (a) the making of an offer of shares or debentures to trustees or members of a partnership or unincorporated association in their capacity as such; or
 - (b) the making of such an offer to any other 2 or more persons jointly,
 is to be treated as the making of an offer to a single person.

5. For the purposes of section 7 of Part 1, a holder of shares in a company, in relation to an offer mentioned in that

section, means a person who, at the close of business on a date—

- (a) specified in the offer; or
 - (b) falling within the period of 60 days ending with the date on which the offer is first made,
- is a holder of shares in the company.

6. For the purposes of this section and section 8 of Part 1—

(a) **qualifying person** (合資格的人), in relation to a company—

(i) means—

(A) a bona fide director, employee, officer, consultant, former director, former employee, former officer or former consultant of the company;

(B) a bona fide dependent of any person mentioned in sub-subparagraph (A);

(ii) includes the trustees of a trust—

(A) established by any one or more of the companies mentioned in section 8(c)(i) and (ii) of Part 1; and

(B) which can hold shares or debentures on behalf of any person referred to in subparagraph (i);

(b) **consultant** (顧問) means a person who, pursuant to a contract for services, renders services to a company (“the relevant company”) which are commonly rendered by an employee of—

(i) the relevant company; or

(ii) a company belonging to the class of companies which predominantly carry out the same kind of business as the relevant company;

(c) **dependent** (受養人), in relation to a person, means—

(i) the wife, husband, widow or widower of the person; or

(ii) any child, or stepchild, of the person under the age of 18 years.

7. The Commission may prepare and publish guidelines in relation to the provisions of this Schedule.

8. Guidelines published under section 7 are not subsidiary legislation.

(Seventeenth Schedule added 30 of 2004 s. 2)

(Format changes—E.R. 1 of 2014)

Schedule:	18	Warning, etc. Statements to Be Contained in Certain Documents	E.R. 1 of 2014	03/03/2014
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[sections 38, 38AA, 342, 342AA, & 360 & 17th & 21st Schedules]
(Amended 8 of 2011 s. 22)

Part 1

Statement to Be Contained in Prospectus to which Section 38(1) of this Ordinance Applies

A statement, in a prominent position, if in the English language, in the following form or a form to the like effect—

“IMPORTANT

If you are in any doubt about any of the contents of this prospectus, you should obtain independent professional advice.” ;

and, if in the Chinese language, a statement in the following form or a form to the like effect—

“重要提示

如你對此招股章程的任何內容有任何疑問，你應尋求獨立專業意見。”。

Part 2

Statement to Be Contained in Prospectus to which Section 342(1) of this Ordinance Applies

A statement, in a prominent position, if in the English language, in the following form or a form to the like effect—

“IMPORTANT

If you are in any doubt about any of the contents of this prospectus, you should obtain independent professional advice.”；

and, if in the Chinese language, a statement in the following form or a form to the like effect—

“重要提示

如你對此招股章程的任何內容有任何疑問，你應尋求獨立專業意見。”。

Part 3

Statement to Be Contained in Certain Offers Specified in Part 1 of the Seventeenth Schedule

A statement, in a prominent position, if in the English language, in the following form or a form to the like effect—

“WARNING

The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.”；

and, if in the Chinese language, a statement in the following form or a form to the like effect—

“警告

本文件的內容未經在香港的規管當局審核。你應就有關要約謹慎行事。如你對本文件的任何內容有任何疑問，你應尋求獨立專業意見。”。

Part 4

Statement to Be Contained in Issue Prospectus, etc. Mentioned in the Twenty-first Schedule

A statement, in a prominent position, if in the English language, in the following form or a form to the like effect—

“Potential investors should read the issue prospectus in conjunction with the programme prospectus to which it relates in order to understand the offer to which the documents relate, in particular before making an application in response to the offer.”；

and, if in the Chinese language, a statement in the following form or a form to the like effect—

“潛在投資者應參閱發行章程並一併參閱與其相關的計劃章程，以明白該文件所關乎的要約，你尤其應該在應有關要約提出申請前參閱上述文件。”。

Part 5

Statement to Be Contained in Amendment to Issue Prospectus Mentioned in the Twenty-first Schedule

A statement, in a prominent position, if in the English language, in the following form or a form to the like effect—

“Potential investors should read this amendment in conjunction with the issue prospectus which it amends in order to understand the offer to which the documents relate, in particular before making an application in response to the offer.” ;

and, if in the Chinese language, a statement in the following form or a form to the like effect—

“潛在投資者應參閱本修訂並一併參閱被修訂的發行章程，以明白該文件所關乎的要約，你尤其應該在應有關要約提出申請前參閱上述文件。”。

(Eighteenth Schedule added 30 of 2004 s. 2)
(Format changes—E.R. 1 of 2014)

Schedule:	19	Contents and Publication Requirements of Advertisements Mentioned in Section 38b(2)(e) of this Ordinance	E.R. 1 of 2014	03/03/2014
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[sections 38AA, 38B,
342AA & 360]
(Amended 8 of 2011 s. 23)

1. Contents of advertisement

- (1) The advertisement must contain the following mandatory particulars or particulars to the like effect—
 - (a) a statement that the advertisement is issued by the company to which the advertisement relates;
 - (b) a warning statement that potential investors should read the prospectus for detailed information about the company and the proposed offering before deciding whether or not to invest in the shares or debentures concerned; and
 - (c) a statement that the advertisement does not constitute an offer or an invitation to induce an offer by any person to acquire, subscribe for or purchase the shares or debentures concerned.
- (2) The advertisement may contain the following discretionary particulars but, subject to section 38B(2AA) of this Ordinance, no other discretionary particulars—
 - (a) the name of the company to which the advertisement relates and the place of incorporation of the company;
 - (b) a description of the shares or debentures offered or proposed to be offered;
 - (c) the dates on which, and the places at which, the prospectus to which the advertisement relates is or will be available to the public;
 - (d) details of the administrative procedures relevant to investors that are likely to assist their participation in the offer;
 - (e) if a listing is being applied for in Hong Kong or elsewhere, a statement that the company is seeking listing of, and permission to deal in, the shares or debentures concerned on the stock exchange or stock exchanges concerned; and
 - (f) legends designed to clarify the legal nature of the advertisement if, but only if, the legends are consistent with—
 - (i) the advertisement not being a prospectus; and
 - (ii) guidelines published under section 38BA of this Ordinance.

2. Language

The advertisement may be in the English language or the Chinese language or both languages.

(Nineteenth Schedule added 30 of 2004 s. 2)

(Format changes—E.R. 1 of 2014)

Schedule:	20	Amendment of Prospectus Consisting of One Document	E.R. 1 of 2014	03/03/2014
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[sections 38A, 38AA, 39A,
342A, 342AA, 342CA
& 360 & 12th Schedule]
(Amended 8 of 2011 s. 24)

Part 1

Companies Incorporated in Hong Kong

1. Amendments

The information contained in—

- (a) a prospectus may only be amended by—
 - (i) an addendum to the prospectus; or
 - (ii) replacing the prospectus with a new prospectus;
- (b) an addendum to a prospectus may only be amended by—
 - (i) a further addendum to the prospectus;
 - (ii) replacing the addendum with a new addendum; or
 - (iii) replacing the addendum and prospectus with a new prospectus.

2. Amendment made pursuant to section 1 is prospectus

It is hereby declared that any amendment made pursuant to section 1 is a prospectus and, subject to section 3, the provisions of this Ordinance shall apply to the amendment accordingly.

3. Certain amendments made pursuant to section 1 to be read with prospectus

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 1(a)(i) or (b)(i) or (ii), the amendment shall, for the purposes of that application, be read with the prospectus to which it relates and the addenda, if any, to the prospectus.

Part 2

Companies Incorporated Outside Hong Kong

1. Amendments

The information contained in—

- (a) a prospectus may only be amended by—
 - (i) an addendum to the prospectus; or
 - (ii) replacing the prospectus with a new prospectus;
- (b) an addendum to a prospectus may only be amended by—
 - (i) a further addendum to the prospectus;
 - (ii) replacing the addendum with a new addendum; or
 - (iii) replacing the addendum and prospectus with a new prospectus.

2. Amendment made pursuant to section 1 is prospectus

It is hereby declared that any amendment made pursuant to section 1 is a prospectus and, subject to section 3, the provisions of this Ordinance shall apply to the amendment accordingly.

3. Certain amendments made pursuant to section 1 to be read with prospectus

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 1(a)(i) or (b)(i) or (ii), the amendment shall, for the purposes of that application, be read with the prospectus to which it relates and the addenda, if any, to the prospectus.

(Twentieth Schedule added 30 of 2004 s. 2)

(Format changes—E.R. 1 of 2014)

Schedule:	21	Provisions in Accordance with which a Prospectus May Consist of More Than One Document	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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Expanded Cross Reference:

37, 38, 38A, 38B, 38BA, 38C, 38D, 39, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B

[sections 38A, 38AA, 39B,
342A, 342AA, 342CB &
360 & 12th & 18th Schedules]
(Amended 8 of 2011 s. 25)

Part 1

Prospectus to which the Provisions of Part II of this Ordinance Apply

1. Interpretation

In this Part—

issue prospectus (發行章程) means that prospectus to which the provisions of Part II of this Ordinance apply contained in the document, or series of documents, mentioned in section 2(1)(b);

programme prospectus (計劃章程) means that prospectus to which the provisions of Part II of this Ordinance apply contained in the document mentioned in section 2(1)(a);

relevant information (有關資料), in relation to a prospectus, means such information as is required by the provisions of sections 37 to 44B of, and the Third Schedule to, this Ordinance to be contained in the prospectus. <* Note- Exp. x-Ref: Sections 37, 38, 38A, 38B, 38BA, 38C, 38D, 39, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B *>

2. Prospectus consisting of more than one document

(1) A prospectus may consist of—

(a) a document containing such relevant information as the issuer of the document thinks fit (but excluding the price, or any formula for calculating the price, of the shares or debentures to which the prospectus relates); and

(b) a document, or series of documents, containing such relevant information as is not already contained in the document mentioned in paragraph (a).

(2) For the avoidance of doubt, it is hereby declared that an issue prospectus does not have to be issued at the same time as the programme prospectus concerned is issued.

3. Amendments

The information contained in—

- (a) a programme prospectus may only be amended by—
 - (i) an addendum to the programme prospectus;
 - (ii) replacing the programme prospectus with a new programme prospectus; or
 - (iii) the issue prospectus concerned or an addendum to the issue prospectus;
- (b) an issue prospectus may only be amended by—
 - (i) an addendum to the issue prospectus; or
 - (ii) replacing the issue prospectus with a new issue prospectus;
- (c) an addendum to a programme prospectus may only be amended by—
 - (i) a further addendum to the programme prospectus;
 - (ii) replacing the addendum with a new addendum;
 - (iii) replacing the addendum and programme prospectus with a new programme prospectus; or
 - (iv) the issue prospectus concerned or an addendum to the issue prospectus;
- (d) an addendum to an issue prospectus may only be amended by—
 - (i) replacing the addendum with a new addendum; or
 - (ii) replacing the addendum and issue prospectus with a new issue prospectus.

4. Amendment made pursuant to section 3 is prospectus

It is hereby declared that any amendment made pursuant to section 3 is a prospectus and, subject to section 5, the provisions of this Ordinance shall apply to the amendment accordingly.

5. Certain amendments made pursuant to section 3 to be read with other related documents

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 3, the amendment shall, for the purposes of that application, be read with all or any of the programme prospectus to which it relates and the addenda, if any, to the programme prospectus and the issue prospectus to which it relates and the addenda, if any, to the issue prospectus, as the case requires.

6. Warning

- (1) Every issue prospectus (including a new issue prospectus mentioned in section 3(b)(ii) or (d)(ii)) and any form of application must contain a statement specified in Part 4 of the Eighteenth Schedule to this Ordinance.
- (2) Any amendment made pursuant to section 3(b)(i) must contain a statement specified in Part 5 of the Eighteenth Schedule to this Ordinance.

7. Availability of programme prospectus, etc.

The issuer of a programme prospectus must make arrangements for—

- (a) the programme prospectus and its addenda, if any; and
- (b) the issue prospectus concerned and its addenda, if any,

to be readily available to investors and potential investors throughout the period during which the shares or debentures to which the issue prospectus relates are offered or sold to the public.

8. Cessation of offer to which programme prospectus, etc. relates

The shares or debentures the subject of a programme prospectus and its addenda, if any, and the issue prospectus concerned and its addenda, if any, shall cease to be offered or sold to the public on and after the date of—

- (a) the publication of the next annual report and financial statements of the company to which the programme prospectus relates after the publication of the programme prospectus;
- (b) the first anniversary of the date of publication of the programme prospectus; or
- (c) if there is a guarantor corporation, within the meaning of section 38(8) of this Ordinance, in relation to

the offer concerned, the publication of the next annual report and financial statements of the guarantor corporation after the publication of the programme prospectus, whichever is the earlier.

(Amended 28 of 2012 ss. 912 & 920)

9. Application of section 38C of this Ordinance

It is hereby declared that, where section 38C of this Ordinance has been complied with in respect of a programme prospectus which has been issued, the issue of any issue prospectus concerned does not of itself require that section to again be complied with in respect of the programme prospectus.

Part 2

Prospectus to which the Provisions of Part XII of this Ordinance Apply

1. Interpretation

In this Part—

issue prospectus (發行章程) means that prospectus to which the provisions of Part XII of this Ordinance apply contained in the document, or series of documents, mentioned in section 2(1)(b);

programme prospectus (計劃章程) means that prospectus to which the provisions of Part XII of this Ordinance apply contained in the document mentioned in section 2(1)(a);

relevant information (有關資料), in relation to a prospectus, means such information as is required by the provisions of Part XII of, and the Third Schedule to, this Ordinance to be contained in the prospectus.

2. Prospectus consisting of more than one document

(1) A prospectus may consist of—

- (a) a document containing such relevant information as the issuer of the document thinks fit (but excluding the price, or any formula for calculating the price, of the shares or debentures to which the prospectus relates); and
- (b) a document, or series of documents, containing such relevant information as is not already contained in the document mentioned in paragraph (a).

(2) For the avoidance of doubt, it is hereby declared that an issue prospectus does not have to be issued at the same time as the programme prospectus concerned is issued.

3. Amendments

The information contained in—

- (a) a programme prospectus may only be amended by—
 - (i) an addendum to the programme prospectus;
 - (ii) replacing the programme prospectus with a new programme prospectus; or
 - (iii) the issue prospectus concerned or an addendum to the issue prospectus;
- (b) an issue prospectus may only be amended by—
 - (i) an addendum to the issue prospectus; or
 - (ii) replacing the issue prospectus with a new issue prospectus;
- (c) an addendum to a programme prospectus may only be amended by—
 - (i) a further addendum to the programme prospectus;
 - (ii) replacing the addendum with a new addendum;
 - (iii) replacing the addendum and programme prospectus with a new programme prospectus; or
 - (iv) the issue prospectus concerned or an addendum to the issue prospectus;
- (d) an addendum to an issue prospectus may only be amended by—
 - (i) replacing the addendum with a new addendum; or

- (ii) replacing the addendum and issue prospectus with a new issue prospectus.

4. Amendment made pursuant to section 3 is prospectus

It is hereby declared that any amendment made pursuant to section 3 is a prospectus and, subject to section 5, the provisions of this Ordinance shall apply to the amendment accordingly.

5. Certain amendments made pursuant to section 3 to be read with other related documents

Where it enables a provision of this Ordinance (including paragraph 3 of the Third Schedule to this Ordinance) to apply to an amendment made pursuant to section 3, the amendment shall, for the purposes of that application, be read with all or any of the programme prospectus to which it relates and the addenda, if any, to the programme prospectus and the issue prospectus to which it relates and the addenda, if any, to the issue prospectus, as the case requires.

6. Warning

- (1) Every issue prospectus (including a new issue prospectus mentioned in section 3(b)(ii) or (d)(ii)) and any form of application must contain a statement specified in Part 4 of the Eighteenth Schedule to this Ordinance.
- (2) Any amendment made pursuant to section 3(b)(i) must contain a statement specified in Part 5 of the Eighteenth Schedule to this Ordinance.

7. Availability of programme prospectus, etc.

The issuer of a programme prospectus must make arrangements for—

- (a) the programme prospectus and its addenda, if any; and
- (b) the issue prospectus concerned and its addenda, if any,

to be readily available to investors and potential investors throughout the period during which the shares or debentures to which the issue prospectus relates are offered or sold to the public.

8. Cessation of offer to which programme prospectus, etc. relates

The shares or debentures the subject of a programme prospectus and its addenda, if any, and the issue prospectus concerned and its addenda, if any, shall cease to be offered or sold to the public on and after the date of—

- (a) the publication of the next annual report and financial statements of the company to which the programme prospectus relates after the publication of the programme prospectus;
- (b) the first anniversary of the date of publication of the programme prospectus; or
- (c) if there is a guarantor corporation, within the meaning of section 342(8) of this Ordinance, in relation to the offer concerned, the publication of the next annual report and financial statements of the guarantor corporation after the publication of the programme prospectus,

whichever is the earlier.

(Amended 28 of 2012 ss. 912 & 920)

9. Application of section 342B of this Ordinance

It is hereby declared that, where section 342B of this Ordinance has been complied with in respect of a programme prospectus which has been issued, the issue of any issue prospectus concerned does not of itself require that section to again be complied with in respect of the programme prospectus.

(Twenty-first Schedule added 30 of 2004 s. 2)

(Format changes—E.R. 1 of 2014)

Schedule:	22	Persons Specified for the Purposes of Section 40 of this Ordinance	E.R. 1 of 2014	03/03/2014
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[sections 38AA, 40,
342AA & 360]
(Amended 8 of 2011 s. 26)

1. Persons who subscribe for or purchase shares or debentures pursuant to an offer in a prospectus.
2. Persons who by means of an agent acquire shares or debentures pursuant to an offer in a prospectus.
3. Persons who acquire shares or debentures pursuant to arrangements made between—
 - (a) the issuer or vendor of the shares or debentures; and
 - (b) intermediaries appointed for the purposes of the offer.

(Twenty-second Schedule added 30 of 2004 s. 2)
(Format changes—E.R. 1 of 2014)

Schedule:	23	Parent and Subsidiary Undertakings	L.N. 163 of 2013; E.R. 1 of 2014	03/03/2014
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Expanded Cross Reference:

3, 4, 5, 5A, 5B, 5C, 6, 7, 8, 9, 10

[sections 2B & 360]

1. Interpretation

(1) For the purposes of the provisions specified under section 2B(3) of this Ordinance and this Schedule—

parent company (母公司) means a parent undertaking which is a company;

parent undertaking (母企業) shall be construed in accordance with section 2;

shares (股、股份) shall be construed as a reference to—

- (a) in relation to an undertaking with a share capital, the allotted shares;
- (b) in relation to an undertaking with capital in the form other than share capital, the rights to share in the capital of the undertaking; and
- (c) in relation to an undertaking without any capital, the interest—
 - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up;

undertaking (企業) means—

- (a) a body corporate;
 - (b) a partnership; or
 - (c) an unincorporated association carrying on a trade or business, whether for profit or not.
- (2) In construing any references to an undertaking which is not a company for the purposes of this Ordinance, other expressions appropriate to companies shall be construed, in relation to that undertaking, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

2. Parent undertaking and subsidiary undertaking

(1) An undertaking is a parent undertaking (**parent undertaking**) in relation to another undertaking (**subsidiary undertaking**) if—

- (a) (i) in the case where both the parent undertaking and the subsidiary undertaking are bodies

corporate, the subsidiary undertaking is a subsidiary of the parent undertaking by virtue of section 2(4), (5), (6) and (7) of this Ordinance; or

- (ii) in any other case, the parent undertaking—
 - (A) holds a majority of the voting rights in the subsidiary undertaking;
 - (B) is a member of the subsidiary undertaking and has the right to appoint or remove a majority of its board of directors; or
 - (C) is a member of the subsidiary undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the subsidiary undertaking; or
- (b) the parent undertaking has the right to exercise a dominant influence over the subsidiary undertaking by virtue of—
 - (i) the provisions contained in any document constituting or regulating the subsidiary undertaking; or (Amended 28 of 2012 ss. 912 & 920)
 - (ii) a control contract.
- (2) For the purposes of subsection (1)(a)(ii), an undertaking shall be treated as a member of another undertaking (*the relevant undertaking*), if—
 - (a) any of its subsidiary undertakings is a member of the relevant undertaking; or
 - (b) any shares in the relevant undertaking are held by a person acting on behalf of the first-mentioned undertaking or any of its subsidiary undertakings.
- (3) An undertaking shall be treated as the parent undertaking of another undertaking if a subsidiary undertaking of the first-mentioned undertaking is, or is to be treated as, the parent undertaking of that other undertaking; and references to a subsidiary undertaking of the first-mentioned undertaking shall be construed accordingly.
- (4) Sections 3 to 10 contain provisions explaining expressions used in this section and otherwise supplementing this section. <* Note - Exp. X-Ref.: Sections 3, 4, 5, 5A, 5B, 5C, 6, 7, 8, 9, 10 *>

3. Voting rights in undertaking

- (1) For the purposes of section 2(1)(a)(ii)(A) and (C), the references to the voting rights in an undertaking shall be construed as references to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.
- (2) For the purposes of subsection (1), where an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

4. Right to appoint or remove majority of directors

For the purposes of section 2(1)(a)(ii)(B)—

- (a) the reference to the right to appoint or remove a majority of the board of directors shall be construed as a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters;
- (b) an undertaking shall be treated as having the right to appoint to a directorship if—
 - (i) a person's appointment to it follows necessarily from his appointment as a director of the undertaking; or
 - (ii) the directorship is held by the undertaking itself; and
- (c) a right to appoint or remove a directorship which is exercisable only with the consent of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

5. Right to exercise dominant influence

For the purposes of section 2(1)(b)—

- (a) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which the directors are, or a majority of the directors is, obliged to comply with whether or not they are for the benefit of that other undertaking; and
- (b) a **control contract** (控制合約) means a contract in writing conferring such a right which is—
 - (i) of a kind authorized by any document constituting or regulating the undertaking in relation to which the right is exercisable; and (Amended 28 of 2012 ss. 912 & 920)
 - (ii) permitted by the law under which that undertaking is established.

6. Rights exercisable only in certain circumstances

- (1) For the purposes of this Schedule but without prejudice to subsection (2), rights which are exercisable only in certain circumstances shall be taken into account only—
 - (a) when the circumstances have arisen, and for so long as they continue to obtain; or
 - (b) when the circumstances are within the control of the person having the rights.
- (2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

7. Rights held by one person on behalf of another

For the purposes of this Schedule—

- (a) rights held by a person in a fiduciary capacity shall be treated as not held by him;
- (b) rights held by a person as nominee for another shall be treated as held by the other; and
- (c) rights shall be treated as held as nominee for another if they are exercisable only on his instructions or with his consent.

8. Rights attached to shares by way of security

Where any rights referred to in this Schedule are attached to shares held by way of security, the rights shall be treated as held by the person providing the security, if—

- (a) apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in accordance with his instructions; or
- (b) the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in his interests.

9. Rights attributed to parent undertaking

- (1) For the purposes of section 2, rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.
- (2) Nothing in section 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.
- (3) For the purposes of section 8, rights shall be treated as being exercisable in accordance with the instructions of or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.
- (4) In this section, **group undertaking** (企業集團), in relation to an undertaking (**relevant undertaking**), means an undertaking which is—
 - (a) a parent undertaking or subsidiary undertaking of the relevant undertaking; or
 - (b) a subsidiary undertaking of any parent undertaking of the relevant undertaking.

10. Supplementary

References in any provision of sections 7, 8 and 9 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those sections but not rights which by virtue of any such

provision are to be treated as not held by him.

(Twenty-third Schedule added 12 of 2005 s. 18)
(Format changes—E.R. 1 of 2014)

Schedule:	24	(Repealed 28 of 2012 ss. 912 & 920)	L.N. 163 of 2013	03/03/2014
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