

2. Interpretation

(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(1); (*Added 6 of 1984 s. 2.*)

Amended 14 of 2016 s. 6)

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(1)(a) or (aa) or (1A); (*Added 46 of 2000 s. 2. Amended 14 of 2016 s. 6)*

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*)

transaction at an undervalue (遜值交易)—see section 265E; (*Added 14 of 2016 s. 6*)

unfair preference (不公平優惠)—see section 266A; (*Added 14 of 2016 s. 6*)

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*)

- (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 overseas 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)
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[cf. 1929 c. 23 s. 380 U.K.]

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