

**第 10 部****董事及公司秘書***(格式變更——2013 年第 1 號編輯修訂紀錄)***第 1 分部 —— 董事的委任、罷免及辭職****第 1 次分部 —— 須有董事的規定****453. 公眾公司及擔保有限公司須有最少 2 名董事**

- (1) 本條適用於 ——
  - (a) 公眾公司；及
  - (b) 擔保有限公司。
- (2) 公司須有最少 2 名董事。
- (3) 自公司成立為法團的日期起，在根據第 67(1) 條交付處長的法團成立表格內列名為董事的人，即擔任該公司的首任董事。
- (4) 在有委任董事的通知按照第 645(1) 條向處長交付之前，在緊接本條的生效日期<sup>#</sup>前，根據修訂前的《前身條例》第 153(2) 條被當作為有關公司的董事的人，須繼續被當作為公司的董事，猶如《2004 年公司 (修訂) 條例》(2004 年第 30 號) 附表 2 第 19(1) 條沒有制定一樣。
- (5) 如根據公司的章程細則，在董事人數減至少於所訂定的董事最低法定人數的情況下，一名董事可行使第 (6) 款指明的權力，則在董事人數減至少於第 (2) 款所規定的人數的情況下，該權力亦可予行使。
- (6) 為施行第 (5) 款而指明的權力，是為以下目的 (但並非為任何其他目的) 而行使的權力 ——
  - (a) 增加董事人數；或

**Part 10****Directors and Company Secretaries***(Format changes—E.R. 1 of 2013)***Division 1—Appointment, Removal and Resignation of Directors****Subdivision 1—Requirement to have Directors****453. Public company and company limited by guarantee required to have at least 2 directors**

- (1) This section applies to—
  - (a) a public company; and
  - (b) a company limited by guarantee.
- (2) The company must have at least 2 directors.
- (3) With effect from the date of incorporation of the company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).
- (4) A person who is deemed to be a director of the company under section 153(2) of the pre-amended predecessor Ordinance immediately before the commencement date<sup>#</sup> of this section continues to be deemed to be a director of the company as if section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 645(1).
- (5) If a power specified in subsection (6) is exercisable by a director under the company's articles where the number of

(b) 召開公司成員大會。

(7) 在第 (4) 款中 ——

**修訂前的《前身條例》** (pre-amended predecessor Ordinance) 指在緊接被《2004 年公司 (修訂) 條例》(2004 年第 30 號) 附表 2 第 19(1) 條修訂前屬有效的《前身條例》。

編輯附註：

\* 生效日期：2014 年 3 月 3 日。

#### 454. 私人公司須有最少一名董事

- (1) 私人公司須有最少一名董事。
- (2) 自私人公司成立為法團的日期起，在根據第 67(1) 條交付處長的法團成立表格內列名為董事的人，即擔任該公司的首任董事。
- (3) 在有委任董事的通知按照第 645(1) 條向處長交付之前，在緊接本條的生效日期<sup>#</sup>前，根據修訂前的《前身條例》第 153A(2) 條被當作為有關私人公司的董事的人，須繼續被當作為該公司的董事，猶如《2004 年公司 (修訂) 條例》(2004 年第 30 號) 附表 2 第 20(1) 條沒有制定一樣。
- (4) 在第 (3) 款中 ——

directors is reduced below the number fixed as the necessary quorum of directors, the power is exercisable also where the number of directors is reduced below the number required by subsection (2).

(6) The power specified for the purposes of subsection (5) is a power to act for the purpose of—

(a) increasing the number of directors; or

(b) calling a general meeting of the company, but not for any other purpose.

(7) In subsection (4)—

**pre-amended predecessor Ordinance** (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 19(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

Editorial Note:

\* Commencement date: 3 March 2014.

#### 454. Private company required to have at least one director

- (1) A private company must have at least one director.
- (2) With effect from the date of incorporation of a private company, the first directors of the company are the persons named as the directors in the incorporation form delivered to the Registrar under section 67(1).
- (3) A person who is deemed to be a director of a private company under section 153A(2) of the pre-amended predecessor Ordinance immediately before the commencement date<sup>#</sup> of this section continues to be deemed to be a director of the company as if section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) had not been

**修訂前的《前身條例》** (pre-amended predecessor Ordinance) 指在緊接被《2004 年公司 (修訂) 條例》(2004 年第 30 號) 附表 2 第 20(1) 條修訂前屬有效的《前身條例》。

編輯附註：

# 生效日期：2014 年 3 月 3 日。

#### 455. 私人公司的備任董事的提名

- (1) 如私人公司只有一名成員，而該成員是該公司的唯一董事，則不論該公司的章程細則有何規定，該公司可藉在成員大會上通過的決議，提名一人 (須不屬法人團體) 為其備任董事，該人須年滿 18 歲，而一旦該唯一董事去世，該備任董事即代替該唯一董事行事。
- (2) 凡某人就某唯一董事獲提名為某私人公司的備任董事，則如——
  - (a) 在該唯一董事去世前——
    - (i) 該人按照第 464 條的規定，辭去備任董事職位；或
    - (ii) 該公司在成員大會上撤銷該項提名；或
  - (b) 該唯一董事因任何理由 (該董事去世除外) 不再是該公司的唯一成員以及唯一董事，該項提名即告失效。
- (3) 如私人公司的備任董事的提名根據第 (2) 款失效，該公司須按照第 645(4) 條，向處長交付通知。
- (4) 凡備任董事就某唯一董事而獲提名，而該唯一董事去世，則在符合第 (5) 款指明的條件的前提下，該備任董事就所

enacted, until a notice of appointment of a director is delivered to the Registrar in accordance with section 645(1).

(4) In subsection (3)—

**pre-amended predecessor Ordinance** (修訂前的《前身條例》) means the predecessor Ordinance that was in force immediately before it was amended by section 20(1) of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004).

Editorial Note:

# Commencement date: 3 March 2014.

#### 455. Nomination of reserve director of private company

- (1) If a private company has only one member and that member is the sole director of the company, the company may by a resolution passed at a general meeting, despite anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of the sole director's death.
- (2) The nomination of a person as a reserve director of a private company ceases to have effect if—
  - (a) before the death of the director in respect of whom the person was nominated—
    - (i) the person resigns as reserve director in accordance with section 464; or
    - (ii) the company at a general meeting revokes the nomination; or
  - (b) the director in respect of whom the person was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.

有目的而言，須視為有關公司的董事，直至以下兩種情況中之較早者發生為止——

- (a) 某人按照該公司的章程細則，獲委任為該公司的董事；或
  - (b) 該備任董事按照第 464 條的規定，辭去董事職位。
- (5) 為施行第 (4) 款而指明的條件為——
- (a) 有關備任董事的提名沒有根據第 (2) 款而失效；及
  - (b) 法律不禁止該備任董事擔任有關公司的董事，而該備任董事亦沒有喪失擔任該公司的董事的資格。

#### 456. 法人團體擔任董事的限制

- (1) 本條適用於——
  - (a) 公眾公司；
  - (b) 屬某個有上市公司為成員的公司集團的成員的私人公司；及
  - (c) 擔保有限公司。
- (2) 法人團體不得獲委任為有關公司的董事。
- (3) 任何違反第 (2) 款而作出的委任，均屬無效。

- (3) If the nomination of a person as a reserve director of a private company ceases to have effect under subsection (2), the company must deliver a notice to the Registrar in accordance with section 645(4).
- (4) Subject to compliance with the conditions specified in subsection (5), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director is to be regarded as a director of the company for all purposes until—
  - (a) a person is appointed as a director of the company in accordance with its articles; or
  - (b) the reserve director resigns from the office of director in accordance with section 464,
 whichever is the earlier.
- (5) The conditions specified for the purposes of subsection (4) are—
  - (a) that the nomination of the reserve director has not ceased to have effect under subsection (2); and
  - (b) that the reserve director is not prohibited by law nor disqualified from acting as a director of the company.

#### 456. Restriction on body corporate being director

- (1) This section applies to—
  - (a) a public company;
  - (b) a private company that is a member of a group of companies of which a listed company is a member; and
  - (c) a company limited by guarantee.
- (2) A body corporate must not be appointed a director of the company.

- (4) 雖然法人團體憑藉本條不能獲委任為董事，但如該團體——
- (a) 本意是以董事的身分行事；或
  - (b) 以幕後董事的身分行事，
- 則本條不影響該團體在本條例或《公司（清盤及雜項條文）條例》（第 32 章）任何條文下的法律責任。

**457. 須有最少一名自然人董事**

- (1) 本條適用於任何私人公司；但如有關私人公司屬某公司集團的成員，而該公司集團的成員當中有上市公司，則本條不適用於該私人公司。
- (2) 有關公司須有最少一名屬自然人的董事。

**458. 規定公司委任董事的指示**

- (1) 處長如覺得某公司違反第 453(2)、454(1) 或 457(2) 條，可指示該公司委任一名或多於一名董事，以符合該條的規定。
- (2) 上述指示須指明——
  - (a) 有關公司看似違反的法例規定；
  - (b) 在第 (3) 款的規限下，該公司遵從該指示的限期；及
  - (c) 如沒有遵從該指示，即屬第 (6) 款所訂罪行。
- (3) 上述限期不得少於有關指示的發出日期之後的一個月，亦不得超過該日期之後的 3 個月。

- (3) An appointment made in contravention of subsection (2) is void.
- (4) Nothing in this section affects any liability of a body corporate under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if it—
  - (a) purports to act as a director; or
  - (b) acts as a shadow director,
 although it could not, by virtue of this section, be appointed as a director.

**457. Requirement to have at least one director who is natural person**

- (1) This section applies to a private company other than a private company that is a member of a group of companies of which a listed company is a member.
- (2) The company must have at least one director who is a natural person.

**458. Direction requiring company to appoint director**

- (1) If it appears to the Registrar that a company is in contravention of section 453(2), 454(1) or 457(2), the Registrar may direct the company to appoint a director or directors in compliance with that section.
- (2) The direction must specify—
  - (a) the statutory requirement of which the company appears to be in contravention;
  - (b) subject to subsection (3), the period within which the company must comply with the direction; and
  - (c) that a failure to comply with the direction is an offence under subsection (6).



- (4) 處長可在有關指示指明的限期結束前，藉書面通知，延長該限期。
- (5) 有關公司須以符合以下說明的方式，遵從上述指示：在該指示指明的限期結束前，或（如處長根據第(4)款延長該限期）在延長的限期結束前，作出所需的一項或多於一項委任。
- (6) 如公司沒有遵從本條所指的指示，該公司及其每名責任人均屬犯罪，可各處第 6 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款 \$2,000。

- (3) The period must not be less than one month or more than 3 months after the date on which the direction is given.
- (4) The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.
- (5) The company must comply with the direction by making the necessary appointment or appointments before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (4), the extended period.
- (6) If a company fails to comply with a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

## 第 2 次分部 —— 董事的委任

## Subdivision 2—Appointment of Directors

### 459. 委任為董事的最低年齡

### 459. Minimum age for appointment as director

- (1) 除非某人在獲委任為公司董事時，已年滿 18 歲，否則該人不得獲委任。
- (2) 任何違反第(1)款而作出的委任，均屬無效。
- (3) 雖然某人憑藉本條不能獲委任為董事，但如該人 ——
  - (a) 本意是以董事的身分行事；或
  - (b) 以幕後董事的身分行事，
 則本條不影響該人在本條例或《公司（清盤及雜項條文）條例》（第 32 章）任何條文下的法律責任。

- (1) A person must not be appointed a director of a company unless at the time of appointment the person has attained the age of 18 years.
- (2) An appointment made in contravention of subsection (1) is void.
- (3) Nothing in this section affects any liability of a person under any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) if the person—
  - (a) purports to act as a director; or
  - (b) acts as a shadow director,
 although the person could not, by virtue of this section, be appointed as a director.

**460. 董事的委任須個別表決**

- (1) 本條適用於 ——
  - (a) 公眾公司；及
  - (b) 擔保有限公司。
- (2) 在公司的成員大會上，如擬動議提出藉單一項決議委任 2 人或多於 2 人為該公司的董事，須首先在該成員大會上通過一項批准提出該動議的決議，且無人對該決議投反對票，否則不得提出該動議。
- (3) 任何違反第 (2) 款而動議的決議屬無效，不論當時是否有人反對如此動議該決議亦然。
- (4) 即使有關決議屬無效，在沒有另一項委任的情況下，自動再度委任卸任董事的條文（不論該條文是載於有關公司的章程細則，或載於與該公司訂立的合約或其他文件）不適用。
- (5) 就本條而言，批准委任某人的動議，或提名委任某人的動議，須視為委任該人的動議。

**461. 董事的作為的有效性**

- (1) 任何以董事身分行事的人的作為，均屬有效，即使其後發現有以下情況亦然 ——
  - (a) 委任該人為董事的委任，有欠妥之處；
  - (b) 該人不符合擔任董事的資格，或已喪失擔任董事的資格；
  - (c) 該人已不再擔任董事；或

**460. Appointment of directors to be voted on individually**

- (1) This section applies to—
  - (a) a public company; and
  - (b) a company limited by guarantee.
- (2) At a general meeting of the company, a motion for the appointment of 2 or more persons as directors of the company by a single resolution must not be made, unless a resolution that it may be so made has first been passed at the meeting without any vote against it.
- (3) A resolution moved in contravention of subsection (2) is void, whether or not its being so moved was objected to at the time.
- (4) Despite the fact that the resolution is void, no provision (whether contained in a company's articles or in any contract with the company or otherwise) for the automatic reappointment of retiring directors in default of another appointment applies.
- (5) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, is to be regarded as a motion for the appointment of the person.

**461. Validity of acts of director**

- (1) The acts of a person acting as a director are valid despite the fact that it is afterwards discovered—
  - (a) that there was a defect in the appointment of the person as a director;
  - (b) that the person was not qualified to hold office as a director or was disqualified from holding office as a director;

- (d) 該人無權就有關事宜表決。
- (2) 即使 ——
- (a) 根據第 456(3) 或 459(2) 條，有關的人的董事委任屬無效；或
- (b) 根據第 460(3) 條，委任該人為董事的決議屬無效，第 (1) 款仍適用。

- (c) that the person had ceased to hold office as a director; or
- (d) that the person was not entitled to vote on the matter in question.
- (2) Subsection (1) applies even if—
- (a) the appointment of the person as a director is void under section 456(3) or 459(2); or
- (b) the resolution for the appointment of the person as a director is void under section 460(3).

### 第 3 次分部 —— 董事的罷免及辭職

### Subdivision 3—Removal and Resignation of Directors

#### 462. 罷免董事的決議

- (1) 不論公司章程細則或公司與董事之間的協議有任何規定，在該董事任期屆滿前，該公司可藉在成員大會上通過的普通決議，罷免該董事。
- (2) 如有關公司屬私人公司，第 (1) 款並不授權罷免一名已自 1984 年 8 月 31 日起任終身職的董事。
- (3) 第 (4)、(5)、(6)、(7) 及 (8) 款就藉決議罷免董事而適用，不論該項藉決議作出的罷免是根據第 (1) 款或其他權限作出。
- (4) 特別通知須就以下決議發出 ——
- (a) 罷免董事的決議；或
- (b) 在罷免董事的會議上，委任任何人替代該名遭罷免的董事的決議。

#### 附註 ——

請亦參閱第 578 條，該條列出關於特別通知的規定。

- (5) 因董事遭罷免而出現的空缺，如沒有在罷免該董事的會議上填補，則可作為期中空缺而填補。

#### 462. Resolution to remove director

- (1) A company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's term of office, despite anything in its articles or in any agreement between it and the director.
- (2) Subsection (1) does not, if the company is a private company, authorize the removal of a director who has held office for life since 31 August 1984.
- (3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.
- (4) Special notice is required of a resolution—
- (a) to remove a director; or
- (b) to appoint somebody in place of a director so removed at the meeting at which the director is removed.

#### Note—

See also section 578 which sets out the requirements regarding special notice.



- (6) 凡有某人獲委任為董事以替代遭罷免的董事，就斷定該獲委任的人或任何其他董事的卸任時間而言，該人須視為猶如在該人所替代的人最後獲委任為董事之日出任董事一樣。
- (7) 就罷免任期尚未屆滿的董事的決議而言，在投票表決時，任何股份具有的票數，不可超過它就有關公司的成員大會上表決的一般事宜而具有的票數。
- (8) 如某股份只就某些事宜（而非其他事宜）而具有特別表決權（即有別於其他股份具有的權利），則在第（7）款中，提述在公司的成員大會上表決的一般事宜之處，須解釋為提述該股份對之並不具有特別表決權的事宜。
- (9) 本條不得視為剝奪任何人就以下事宜獲支付的補償或損害賠償——
  - (a) 終止該人的董事委任；或
  - (b) 隨着終止該人的董事委任而終止的其他委任。

**463. 董事抗議罷免的權利**

- (1) 公司如根據第 462(4) 條接獲罷免董事的決議的通知，須立即將該通知的文本，送交有關董事。
- (2) 有關董事（不論是否有關公司的成員）有權在表決上述決議的會議上，就該決議陳詞。

- (5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.
- (6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.
- (7) In relation to a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (8) If a share carries special voting rights (that is to say, rights different from those carried by other shares) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting rights.
- (9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of—
  - (a) the person's appointment as director; or
  - (b) any appointment terminating with that as director.

**463. Director's right to protest against removal**

- (1) On receipt of notice of a resolution under section 462(4) to remove a director, the company must forthwith send a copy of the notice to the director concerned.

- (3) 如有罷免董事的決議的通知根據第 462(4) 條發出，則有關董事 ——
- (a) 可就該決議向有關公司作出不超過合理篇幅的書面申述；及
- (b) 可要求該公司就該申述遵守第 (4) 款指明的規定。
- (4) 為第 (3)(b) 款的施行而指明的規定是 ——
- (a) 如有關公司收到有關申述的日期，早於根據第 571(1) 條可發出通知召開有關會議的最後日子超過 2 日 ——
- (i) 須在發出予成員的每份關於該會議的通知內，述明該申述已作出的規定；及
- (ii) 凡向或已向成員發出關於該會議的通知，須向每名該等成員送交該申述的文本的規定；或
- (b) 如該公司未有將該申述的文本，送交每名獲發或已獲發關於該會議的通知的成員，即須確保在該會議上宣讀該申述的規定。
- (5) 有關公司除非獲第 (6) 款所指的命令豁免，否則須遵從根據第 (3)(b) 款提出的要求。
- (6) 如原訟法庭應有關公司或任何聲稱受屈的人提出的申請，信納已根據第 (3) 款作出申述並提出要求的人 ——
- (a) 濫用其如此行事的權利；或
- (b) 運用該權利，在帶誹謗成分的事宜上，取得不必要的宣傳，
- 則原訟法庭可命令該公司獲豁免而無需遵從該要求。
- (7) 如有關公司違反第 (5) 款，則即使第 562(1) 條已獲遵守，根據第 462(1) 條通過的決議仍屬無效。

- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting at which the resolution is voted on.
- (3) If notice is given of a resolution under section 462(4) to remove a director, the director—
- (a) may make with respect to the resolution representations in writing to the company (not exceeding a reasonable length); and
- (b) may request the company to comply with the requirement specified in subsection (4) in relation to the representations.
- (4) The requirement specified for the purposes of subsection (3)(b) is—
- (a) if the company receives the representations on a date that is more than 2 days before the last day on which notice may be given under section 571(1) to call the meeting, the requirement—
- (i) to state, in every notice of the meeting given to the members, that the representations have been made; and
- (ii) to send a copy of the representations to every member to whom a notice of the meeting is or has been given; or
- (b) if the company has not sent a copy of the representations to every member to whom a notice of the meeting is or has been given, the requirement to ensure that the representations are read out at the meeting.
- (5) Unless exempted by an order under subsection (6), the company must comply with a request made under subsection (3)(b).

**464. 董事的辭職**

- (1) 公司的董事可隨時辭去董事職位，但如該公司的章程細則或與該公司訂立的任何協議另有規定，則屬例外。
- (2) 如公司的董事辭職，該公司須將述明辭職一事的通知交付處長，而交付方式須為第 645(4) 條所規定者。
- (3) 儘管有第 (2) 款的規定，辭職的董事如有合理理由相信有關公司將不會交付有關通知，須將述明辭職一事的通知交付處長登記，該通知須符合指明格式。
- (4) 根據第 (3) 款的規定而交付的通知，須述明 ——
  - (a) 有關公司的章程細則或與該公司訂立的任何協議，有否規定辭職的董事向該公司發出辭職通知；及
  - (b) (如上述章程細則或協議規定發出該通知) 該通知是否已按照該規定發出。
- (5) 如公司的章程細則或與該公司訂立的任何協議，規定發出關於該公司董事辭職的通知，則除非該董事 ——
  - (a) 按照該規定發出書面辭職通知；
  - (b) 將該通知留在該公司的註冊辦事處；或

- (6) On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has made representations and made a requirement under subsection (3)—
  - (a) has abused the right to do so; or
  - (b) has used such a right to secure needless publicity for defamatory matter.
- (7) If the company contravenes subsection (5), the resolution passed under section 462(1) is void even though section 562(1) is complied with.

**464. Resignation of director**

- (1) A director of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as director at any time.
- (2) If a director of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 645(4).
- (3) Despite subsection (2), if the director resigning has reasonable grounds for believing that the company will not deliver the notice, the director resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.
- (4) The notice required to be delivered under subsection (3) must state—
  - (a) whether the director resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
  - (b) if notice is so required, whether the notice has been given in accordance with the requirement.

- (c) 將該通知的印本送交該公司，或將該通知的電子版發送予該公司，  
否則該項辭職無效。
- (6) 在本條中 ——  
**董事** (director) 包括備任董事，亦包括根據第 455(4) 條視為董事的人。

- (5) If notice of the resignation of a director of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the director gives notice in writing of the resignation—
- (a) in accordance with the requirement;
- (b) by leaving it at the registered office of the company; or
- (c) by sending it to the company in hard copy form or in electronic form.
- (6) In this section—  
**director** (董事) includes a reserve director and a person regarded as a director under section 455(4).

## 第 2 分部 —— 以謹慎、技巧及努力行事的董事職責

## Division 2—Directors' Duty of Care, Skill and Diligence

### 465. 有責任以合理水平的謹慎、技巧及努力行事

- (1) 公司的董事須以合理水平的謹慎、技巧及努力行事。
- (2) 合理水平的謹慎、技巧及努力，指任何合理努力並具備以下條件的人在行事時會有的謹慎、技巧以及努力 ——
- (a) 可合理預期任何人在執行有關董事就有關公司所執行的職能時會具備的一般知識、技巧以及經驗；及
- (b) 該董事本身具備的一般知識、技巧以及經驗。
- (3) 第(1)款指明的責任，是有關公司的董事對該公司負有的。
- (4) 第(1)款指明的責任，取代關於公司的董事對該公司負有的以合理水平的謹慎、技巧及努力行事的責任的普通法規則及衡平法原則而有效。
- (5) 本條適用於幕後董事，猶如本條適用於董事一樣。
- (6) 就第(5)款而言，縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體不會僅因此而視為其附屬公司的幕後董事。

### 465. Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with—
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
- (b) the general knowledge, skill and experience that the director has.
- (3) The duty specified in subsection (1) is owed by a director of a company to the company.
- (4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the

- 466. 違反以合理水平的謹慎、技巧及努力行事的責任的民事後果**  
在不影響本條例其他條文及《公司(清盤及雜項條文)條例》(第 32 章)的原則下，違反(或威脅違反)第 465(1)條指明的責任的後果，等同於假使按第 465(1)條取代的普通法規則或衡平法原則仍然適用便會有的後果。

- duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.
- (5) This section applies to a shadow director as it applies to a director.
- (6) For the purposes of subsection (5), a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

- 466. Civil consequences of breach of duty to exercise reasonable care, skill and diligence**

Without affecting other provisions of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the consequences of breach (or threatened breach) of the duty specified in section 465(1) are the same as would apply if the common law rules or equitable principles that section 465(1) replaces applied.

### 第 3 分部 —— 董事的法律責任

### Division 3—Directors' Liabilities

- 467. 釋義及適用範圍**

- (1) 在本分部中 ——

**第三者** (third party) 就公司而言，指既非該公司亦非某有聯繫公司的人；

**獲准許的彌償條文** (permitted indemnity provision) 就公司而言，指符合以下說明的條文 ——

- (a) 訂定就該公司的董事所招致的對第三者的法律責任，向該董事提供彌償；及
- (b) 符合第 469(2) 條指明的規定。

- 467. Interpretation and application**

- (1) In this Division—

**permitted indemnity provision** (獲准許的彌償條文), in relation to a company, means a provision that—

- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
- (b) meets the requirements specified in section 469(2);

**third party** (第三者), in relation to a company, means a person other than the company or an associated company.



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第 468 條

- (2) 第 468、469 及 470 條適用於在它們的生效日期<sup>#</sup>當日或之後訂立的條文。
- (3) 第 471 及 472 條適用於在它們的生效日期<sup>#</sup>當日或之後訂立的獲准許的彌償條文。
- (4) 第 473 條適用於在它的生效日期<sup>#</sup>當日或之後由董事作出的行為。

編輯附註：

<sup>#</sup> 生效日期：2014 年 3 月 3 日。**468. 廢止免除董事的法律責任的條文**

- (1) 本條適用於載於公司的章程細則、與公司訂立的合約或其他文件的條文。
- (2) 如某條文的本意是豁免公司的董事，使該董事無需承擔該董事在與關乎該公司的疏忽、失責、失職或違反信託行為有關連的情況下本應須承擔的法律責任，則該條文屬無效。
- (3) 如公司藉着某條文，直接或間接向該公司的董事或該公司的有聯繫公司的董事提供彌償，以彌償該董事在與關乎該公司或有聯繫公司(視屬何情況而定)的疏忽、失責、失職或違反信託行為有關連的情況下須承擔的法律責任，則該條文屬無效。
- (4) 第(3)款不阻止公司就以下的法律責任，為該公司的董事或該公司的有聯繫公司的董事投購保險並保持該保險有效——
  - (a) 該董事因在與關乎該公司或有聯繫公司(視屬何情況而定)的疏忽、失責、失職或違反信託行為(欺詐行為除外)有關連的情況下對任何人承擔的法律責任；或
  - (b) 該董事在針對該董事提出的民事或刑事法律程序中進行辯護而招致的法律責任，而該法律程序是針對

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- (2) Sections 468, 469 and 470 apply to any provision made on or after the commencement date<sup>#</sup> of those sections.
- (3) Sections 471 and 472 apply to a permitted indemnity provision made on or after the commencement date<sup>#</sup> of those sections.
- (4) Section 473 applies to conduct by a director on or after the commencement date<sup>#</sup> of that section.

Editorial Note:

<sup>#</sup> Commencement date: 3 March 2014.**468. Avoidance of provisions protecting director from liability**

- (1) This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.
- (2) If a provision purports to exempt a director of the company from any liability that would otherwise attach to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for a director of the company, or a director of an associated company of the company, against any liability attaching to the director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or associated company (as the case may be), the provision is void.
- (4) Subsection (3) does not prevent a company from taking out and keeping in force insurance for a director of the company, or a director of an associated company of the company, against—

該董事犯的關乎該公司或有聯繫公司(視屬何情況而定)的疏忽、失責、失職或違反信託行為(包括欺詐行為)而提出的。

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the company or associated company (as the case may be); or
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for any negligence, default, breach of duty or breach of trust (including fraud) in relation to the company or associated company (as the case may be).

#### 469. 獲准許的彌償條文

- (1) 如就有關董事所招致的對第三者的法律責任而提供彌償的條文，符合第(2)款指明的規定，則第468(3)條不適用於該條文。
- (2) 有關條文不得就以下法律責任而提供任何彌償——
  - (a) 有關董事繳付以下款項的法律責任——
    - (i) 在刑事法律程序中判處的罰款；或
    - (ii) 須就不遵守屬規管性質的規定而以罰款形式繳付的款項；或
  - (b) 該董事任何以下法律責任——
    - (i) (如該董事在刑事法律程序中被定罪)該董事因在該法律程序中作抗辯而招致的法律責任；
    - (ii) (如有關公司或有關公司的有聯繫公司提起民事法律程序，而在該法律程序中，該董事被判敗訴)該董事因在該法律程序中作抗辯而招致的法律責任；
    - (iii) (如有關公司的成員或有關公司的有聯繫公司的成員代該公司提起民事法律程序，而在該法律程序中，該董事被判敗訴)該董事因在該法律程序中作抗辯而招致的法律責任；

#### 469. Permitted indemnity provision

- (1) Section 468(3) does not apply to a provision for indemnity against liability incurred by the director to a third party if the requirements specified in subsection (2) are met in relation to the provision.
- (2) The provision must not provide any indemnity against—
  - (a) any liability of the director to pay—
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
  - (b) any liability incurred by the director—
    - (i) in defending criminal proceedings in which the director is convicted;
    - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
    - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of

- (iv) (如有關公司的有聯繫公司的成員，或該有聯繫公司的有聯繫公司的成員，代首述的有聯繫公司提起民事法律程序，而在該法律程序中，該董事被判敗訴) 該董事因在該法律程序中作抗辯而招致的法律責任；或
  - (v) (如該董事根據第 903 或 904 條或《前身條例》第 358 條申請濟助，而原訟法庭拒絕向該董事授予該濟助) 該董事在與該申請有關連的情況下招致的法律責任。
- (3) 在第 (2)(b) 款中，提述定罪、判決或拒絕授予濟助之處，即提述在有關法律程序中的終局決定。
- (4) 為施行第 (3) 款，任何定罪、判決或拒絕授予濟助 ——
- (a) 如沒有遭上訴，在提出上訴的限期結束時，即屬終局；或
  - (b) 如遭上訴，在該上訴或任何進一步上訴獲了結時，即屬終局。
- (5) 為施行第 (4)(b) 款，如上訴 ——
- (a) 已獲判定，而提出進一步上訴的限期已結束；或
  - (b) 已遭放棄，或已在其他情況下失效，該上訴即屬獲了結。

**470. 董事報告須披露獲准許的彌償條文**

- (1) 如在公司的董事擬備的董事報告按照第 391 條獲批准時，某獲准許的彌償條文(不論該條文是否由該公司訂立)正於惠及一名或多於一名該公司的董事的情況下有效，該報告須述明該條文正有效。

- an associated company of the company, in which judgment is given against the director;
- (iv) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or
  - (v) in connection with an application for relief under section 358 of the predecessor Ordinance or section 903 or 904 in which the Court refuses to grant the director relief.
- (3) A reference in subsection (2)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
- (4) For the purposes of subsection (3), a conviction, judgment or refusal of relief—
- (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of subsection (4)(b), an appeal is disposed of if—
- (a) it is determined, and the period for bringing any further appeal has ended; or
  - (b) it is abandoned or otherwise ceases to have effect.

**470. Permitted indemnity provision to be disclosed in directors' report**

- (1) If, when a directors' report prepared by the directors of a company is approved in accordance with section 391, a permitted indemnity provision (whether made by the

- (2) 如在公司的董事擬備的董事報告所關乎的財政年度內的任何時間，某獲准許的彌償條文（不論該條文是否由該公司訂立）曾經於惠及一名或多於一名身為該公司的前董事的人的情況下有效，該報告須述明該條文曾經有效。
- (3) 如在公司的董事擬備的董事報告按照第 391 條獲批准時，由該公司訂立的某獲准許的彌償條文，正於惠及該公司的有聯繫公司的一名或多於一名董事的情況下有效，該報告須述明該條文正有效。
- (4) 如在公司的董事擬備的董事報告所關乎的財政年度內的任何時間，由該公司訂立的某獲准許的彌償條文，曾經於惠及一名或多於一名身為該公司的有聯繫公司的前董事的人的情況下有效，該報告須述明該條文曾經有效。
- (5) 在本條中 ——  
**董事報告** (directors' report) 指 ——  
(a) 根據第 388(1) 條規定須擬備的報告；或  
(b) 根據第 388(2) 條規定須擬備的綜合報告。

**471. 獲准許的彌償條文的文本須備存的地點**

- (1) 如獲准許的彌償條文是為某公司的一名董事而訂立，並適用於 ——

company or otherwise) is in force for the benefit of one or more directors of the company, the report must state that the provision is in force.

- (2) If, at any time during the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, the report must state that the provision was in force.
- (3) If, when a directors' report prepared by the directors of a company is approved in accordance with section 391, a permitted indemnity provision made by the company is in force for the benefit of one or more directors of an associated company of the company, the report must state that the provision is in force.
- (4) If, at any time during the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision made by the company was in force for the benefit of one or more persons who were then directors of an associated company of the company, the report must state that the provision was in force.
- (5) In this section—  
**directors' report** (董事報告) means—  
(a) the report required to be prepared under section 388(1);  
or  
(b) the consolidated report required to be prepared under section 388(2).

**471. Place where copy of permitted indemnity provision must be kept**

- (1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies—

- (a) 該公司 (不論該條文是由該公司或由該公司的有聯繫公司訂立); 及
- (b) (如該條文是由有聯繫公司訂立) 該有聯繫公司, 則本條具有效力。
- (2) 本條適用的公司須在其註冊辦事處或根據第 657 條訂立的規例訂明的地點, 備存以下文件——
- (a) 有關獲准許的彌償條文的文本;
- (b) (如該條文並非以書面形式訂立) 一份列明該條文的條款的書面備忘錄。
- (3) 有關公司——
- (a) 須保留有關文本或備忘錄最少一年, 該年自有關條文的終結或屆滿日期翌日起計; 及
- (b) 須在上述期間內, 備存該文本或備忘錄, 以供查閱。
- (4) 如有關文本或備忘錄備存在有關公司的註冊辦事處以外的地點, 該公司須將備存該文本或備忘錄的地點, 或任何對該地點的更改, 通知處長。該公司須在該文本或備忘錄首次備存在該地點後的 15 日內, 或在該地點有所更改後的 15 日內 (視屬何情況而定), 將上述通知交付處長登記, 該通知須符合指明格式。
- (5) 如公司違反第 (2) 或 (3) 款, 該公司及其每名責任人均屬犯罪, 可各處第 3 級罰款。
- (6) 如公司違反第 (4) 款, 該公司及其每名責任人均屬犯罪, 可各處第 3 級罰款, 如有關罪行是持續的罪行, 則可就該罪行持續期間的每一日, 另各處罰款 \$300。
- (7) 在本條中, 提述某獲准許的彌償條文, 包括對該條文的任何更改。

- (a) to that company (whether the provision is made by that company or an associated company of that company); and
- (b) if the provision is made by an associated company, to that associated company.
- (2) A company to which this section applies must keep the following at its registered office or at a place prescribed by regulations made under section 657—
- (a) a copy of the permitted indemnity provision;
- (b) if the provision is not in writing, a written memorandum setting out the terms of the provision.
- (3) The company—
- (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and
- (b) must keep the copy or memorandum available for inspection during that time.
- (4) If the copy or memorandum is kept at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be in the specified form and delivered to the Registrar for registration within 15 days after the copy or memorandum is first kept at that place or within 15 days after the change (as the case may be).
- (5) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.
- (6) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a



**472. 成員查閱及要求文本的權利**

- (1) 公司的成員一經以訂明方式提出要求，即有權按照根據第 657 條訂立的規例，免費查閱該公司根據第 471 條備存的獲准許的彌償條文的文本或書面備忘錄。
- (2) 有關公司的成員一經提出要求及繳付訂明費用，即有權按照根據第 657 條訂立的規例，獲提供有關條文或備忘錄的文本。
- (3) 在本條中 ——  
**訂明** (prescribed) 指由根據第 657 條訂立的規例訂明。
- (4) 在本條中，提述某獲准許的彌償條文，包括對該條文的任何更改。

**473. 涉及疏忽等的董事行為的追認**

- (1) 本條適用於公司追認涉及關乎該公司的疏忽、失責、失職或違反信託的董事行為。
- (2) 有關公司追認有關行為的決定，只可藉該公司成員通過的決議作出。
- (3) 如在會議上，有人建議通過上述決議，則符合以下任何說明的成員對該決議所投的每一贊成票，均須不予理會 ——
  - (a) 該成員屬董事，而其行為是所尋求的追認的對象；
  - (b) 是與該董事有關連的實體；或

continuing offence, to a further fine of \$300 for each day during which the offence continues.

- (7) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

**472. Right of member to inspect and request copy**

- (1) A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with regulations made under section 657, a copy of a permitted indemnity provision or a written memorandum kept by the company under section 471.
- (2) A member of the company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the provision or memorandum in accordance with regulations made under section 657.
- (3) In this section—  
**prescribed** (訂明) means prescribed by regulations made under section 657.
- (4) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

**473. Ratification of conduct by director involving negligence, etc.**

- (1) This section applies to the ratification by a company of conduct by a director involving negligence, default, breach of duty or breach of trust in relation to the company.
- (2) A decision of the company to ratify the conduct may only be made by resolution of the members of the company.
- (3) If such a resolution is proposed at a meeting, every vote in favour of the resolution by a member who—
  - (a) is a director in respect of whose conduct the ratification is sought;

- (c) 以信託方式，為該董事或該實體持有有關公司的任何股份。
- (4) 第 (3) 款不阻止該款所指明的成員出席商議有關決定的會議，或在計算該會議的法定人數時被計入內，或參與該會議的議事程序。
- (5) 就本條而言 ——
- (a) **行為** (conduct) 包括作為及不作為；
- (b) **董事** (director) 包括前董事；
- (c) 幕後董事須視為董事；及
- (d) 提述與董事有關連的實體，具有第 486 條給予的涵義。
- (6) 本條並不影響 ——
- (a) 有關公司的成員一致同意作出的決定的有效性；或
- (b) 有關董事同意不提起訴的權力，亦不影響有關董事就他們代表有關公司提出的申索進行和解或放棄該申索的權力。
- (7) 本條並不影響 ——
- (a) 對有效追認施加額外規定的任何其他條例或法律規則；或
- (b) 關於不能被有關公司追認的作為的任何法律規則。

- (b) is an entity connected with that director; or
- (c) holds any shares in the company in trust for that director or entity,
- is to be disregarded.
- (4) Subsection (3) does not prevent a member specified in that subsection from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (5) For the purposes of this section—
- (a) **conduct** (行為) includes acts and omissions;
- (b) **director** (董事) includes a former director;
- (c) a shadow director is to be regarded as a director; and
- (d) a reference to an entity connected with a director has the meaning given by section 486.
- (6) Nothing in this section affects—
- (a) the validity of a decision taken by unanimous consent of the members of the company; or
- (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect—
- (a) any other Ordinance or rule of law imposing additional requirements for valid ratification; or
- (b) any rule of law as to acts that are incapable of being ratified by the company.

#### 第 4 分部 —— 公司秘書的委任及辭職

#### Division 4—Appointment and Resignation of Company Secretaries

**474. 公司須有一名公司秘書**

- (1) 公司須有一名公司秘書。
- (2) 自公司成立為法團的日期起，在根據第 67(1) 條交付處長的法團成立表格內指名為公司秘書的人，即擔任該公司的首任公司秘書。
- (3) 如某商號的名稱根據附表 2 第 5(1)(c) 條於法團成立表格內指明，則所有在該表格的日期當日是該商號的合夥人的人，即擔任有關公司首任聯名公司秘書。
- (4) 公司的公司秘書——
  - (a) 如屬自然人，須通常居於香港；及
  - (b) 如屬法人團體，其註冊辦事處須設於香港，或須在香港設有營業地點。
- (5) 在——
  - (a) 公司秘書職位懸空或因任何其他原因以致沒有公司秘書能夠行事的情況下，規定須由或獲准由公司秘書作出的事情，可由任何助理公司秘書或副公司秘書作出，規定須向或獲准向公司秘書作出的事情，可向任何助理公司秘書或副公司秘書作出；或
  - (b) 沒有助理公司秘書或副公司秘書能夠行事的情況下，規定須由或獲准由公司秘書作出的事情，可由董事為此目的而一般地或特別地授權的有關公司的高級人員作出，規定須向或獲准向公司秘書作出的事情，可向該人員作出。

**475. 何種情況下董事不可擔任公司秘書**

- (1) 除第 (2) 及 (3) 款另有規定外，公司的董事可擔任該公司的公司秘書。
- (2) 私人公司的董事如屬該公司唯一董事，則不得兼任該公司的公司秘書。

**474. Company required to have company secretary**

- (1) A company must have a company secretary.
- (2) With effect from the date of incorporation of a company, the first company secretary of the company is the person named as the company secretary in the incorporation form delivered to the Registrar under section 67(1).
- (3) If the name of a firm is specified in the incorporation form under section 5(1)(c) of Schedule 2, all partners of the firm as at the date of the incorporation form are the first joint company secretaries of the company.
- (4) A company secretary of a company must—
  - (a) if a natural person, ordinarily reside in Hong Kong; and
  - (b) if a body corporate, have its registered office or a place of business in Hong Kong.
- (5) Anything required or authorized to be done by or to the company secretary may be done—
  - (a) if the office is vacant or there is for any other reason no company secretary capable of acting, by or to any assistant or deputy company secretary; or
  - (b) if there is no assistant or deputy company secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

**475. Circumstances under which director may not be company secretary**

- (1) Subject to subsections (2) and (3), a director of a company may be a company secretary of the company.
- (2) The director of a private company having only one director must not also be a company secretary of the company.

- (3) 只有一名董事的私人公司的公司秘書，不可是一個亦以該董事為唯一董事的法人團體。

#### 476. 規定公司委任公司秘書的指示

- (1) 處長如覺得公司違反第 474(1) 或 (4) 或 475(2) 或 (3) 條，可指示該公司委任一名公司秘書，以符合該條的規定。
- (2) 上述指示須指明——
  - (a) 有關公司看似違反的法例規定；
  - (b) 在第 (3) 款的規限下，該公司遵從該指示的限期；及
  - (c) 如沒有遵從該指示，即屬第 (6) 款所訂罪行。
- (3) 上述限期不得少於有關指示的發出日期之後的一個月，亦不得超過該日期之後的 3 個月。
- (4) 處長可在有關指示指明的限期結束前，藉書面通知，延長該限期。
- (5) 有關公司須以符合以下說明的方式，遵從上述指示：在該指示指明的限期結束前，或（如處長根據第 (4) 款延長該限期）在延長的限期結束前，作出所需的委任。
- (6) 如公司沒有遵從本條所指的指示，該公司及其每名責任人均屬犯罪，可各處第 6 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款 \$2,000。

- (3) No private company having only one director may have as company secretary of the company a body corporate the sole director of which is the sole director of the private company.

#### 476. Direction requiring company to appoint company secretary

- (1) If it appears to the Registrar that a company is in contravention of section 474(1) or (4) or 475(2) or (3), the Registrar may direct the company to appoint a company secretary in compliance with that section.
- (2) The direction must specify—
  - (a) the statutory requirement of which the company appears to be in contravention;
  - (b) subject to subsection (3), the period within which the company must comply with the direction; and
  - (c) that a failure to comply with the direction is an offence under subsection (6).
- (3) The period must not be less than one month or more than 3 months after the date on which the direction is given.
- (4) The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.
- (5) The company must comply with the direction by making the necessary appointment before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (4), the extended period.
- (6) If a company fails to comply with a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

**477. 公司秘書的辭職**

- (1) 公司的公司秘書可隨時辭去公司秘書職位，但如該公司的章程細則或與該公司訂立的任何協議另有規定，則屬例外。
- (2) 如公司的公司秘書辭職，該公司須將述明辭職一事的通知交付處長，而交付方式須為第 652(2) 條所規定者。
- (3) 儘管有第 (2) 款的規定，辭職的公司秘書如有合理理由相信有關公司將不會交付有關通知，須將述明辭職一事的通知交付處長，該通知須符合指明格式的通知。
- (4) 根據第 (3) 款的規定而交付的通知，須述明——
  - (a) 有關公司的章程細則或與該公司訂立的任何協議，有否規定辭職的公司秘書向該公司發出辭職通知；及
  - (b) (如上述章程細則或協議規定發出該通知) 該通知是否已按照該規定發出。
- (5) 如公司的章程細則或與該公司訂立的任何協議，規定發出關於該公司的公司秘書辭職的通知，則除非該公司秘書——
  - (a) 按照該規定發出書面辭職通知；
  - (b) 將該通知留在該公司的註冊辦事處；或
  - (c) 將該通知的印本送交該公司，或將該通知的電子版發送予該公司，否則該項辭職無效。

**477. Resignation of company secretary**

- (1) A company secretary of a company may, unless it is otherwise provided in the articles of the company or by any agreement with the company, resign as company secretary at any time.
- (2) If a company secretary of a company resigns, the company must deliver a notice of the resignation to the Registrar in the manner required by section 652(2).
- (3) Despite subsection (2), if the company secretary resigning has reasonable grounds for believing that the company will not deliver the notice, the company secretary resigning must deliver to the Registrar for registration a notice of the resignation in the specified form.
- (4) The notice required to be delivered under subsection (3) must state—
  - (a) whether the company secretary resigning is required by the articles of the company or by any agreement with the company to give notice of resignation to the company; and
  - (b) if notice is so required, whether the notice has been given in accordance with the requirement.
- (5) If notice of the resignation of a company secretary of a company is required to be given by the articles of the company or by any agreement with the company, the resignation does not have effect unless the company secretary gives notice in writing of the resignation—
  - (a) in accordance with the requirement;
  - (b) by leaving it at the registered office of the company; or
  - (c) by sending it to the company in hard copy form or in electronic form.



**第 5 分部 —— 關乎董事及公司秘書的雜項條文****Division 5—Miscellaneous Provisions Relating to Directors and Company Secretaries****478. 董事須因候補董事的作為而承擔法律責任等**

- (1) 如某公司的章程細則授權一名董事委任一名候補董事代替他行事，則除非該章程細則載有任何明訂或隱含的相反條文，否則——
  - (a) 獲如此委任的候補董事，須當為作出該委任的董事的代理人；及
  - (b) 委任候補董事的董事須為該候補董事在以候補董事的身分行事時所犯的任何侵權行為，承擔法律責任。
- (2) 第 (1)(b) 款並不影響候補董事為任何作為或不作為而承擔的個人法律責任。

**478. Director vicariously liable for acts of alternate etc.**

- (1) If the articles of a company authorize a director to appoint an alternate director to act in place of the director, then, unless the articles contain any provision to the contrary, whether express or implied—
  - (a) an alternate director so appointed is deemed to be the agent of the director who appoints the alternate director; and
  - (b) a director who appoints an alternate director is vicariously liable for any tort committed by the alternate director while acting in the capacity of alternate director.
- (2) Nothing in subsection (1)(b) affects the personal liability of an alternate director for any act or omission.

**479. 廢止以董事兼公司秘書雙重身分作出的作為**

- (1) 任何條文如規定或授權由公司的董事及公司秘書作出某事情，或規定或授權向某公司的董事及公司秘書作出某事情，則——
  - (a) 由身兼董事及公司秘書的人作出該事情，或向該人作出該事情；或
  - (b) 由身兼董事及代公司秘書的人作出該事情，或向該人作出該事情，
 不屬遵守該條文。
- (2) 本條適用於——
  - (a) 本條例或《公司（清盤及雜項條文）條例》（第 32 章）的條文；及
  - (b) 公司章程細則的條文。

**479. Avoidance of acts done by person in dual capacity as director and company secretary**

- (1) A provision requiring or authorizing a thing to be done by or to a director and a company secretary of a company is not satisfied by its being done by or to the same person acting—
  - (a) both as director and company secretary; or
  - (b) both as director and in place of the company secretary.
- (2) This section applies to—
  - (a) any provision of this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); and
  - (b) any provision in a company's articles.

**480. 關於未獲解除破產的破產人擔任董事的條文**

- (1) 身為未獲解除破產的破產人的人，不得擔任任何公司的董事，或直接或間接參與或關涉任何公司的管理，但如該人獲裁定他破產的原訟法庭許可，則屬例外。
- (2) 任何人違反第 (1) 款，即屬犯罪——
  - (a) 一經循公訴程序定罪，可處罰款 \$700,000 及監禁 2 年；或
  - (b) 一經循簡易程序定罪，可處罰款 \$150,000 及監禁 12 個月。
- (3) 除非擬申請原訟法庭許可的意向通知書已送達破產管理署署長，否則原訟法庭不得為本條的目的給予許可。
- (4) 破產管理署署長如認為批准第 (3) 款所指的申請有違公眾利益，則須出席該申請的聆訊，並且反對批准該申請。
- (5) 在第 (1) 款中——  
*公司* (*company*) 一詞具有《公司 (清盤及雜項條文) 條例》(第 32 章) 第 168C(1) 條給予該詞的涵義。

**481. 董事會議及董事決議的紀錄***(由 2018 年第 35 號第 55 條修訂)*

- (1) 公司須安排對以下各項予以記錄——*(由 2018 年第 35 號第 55 條修訂)*
  - (a) 董事會議所有議事程序的紀錄；及

**480. Provisions as to undischarged bankrupt acting as director**

- (1) A person who is an undischarged bankrupt must not act as director of, or directly or indirectly take part or be concerned in the management of, a company, except with the leave of the Court by which the person was adjudged bankrupt.
- (2) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on conviction on indictment to a fine of \$700,000 and to imprisonment for 2 years; or
  - (b) on summary conviction to a fine of \$150,000 and to imprisonment for 12 months.
- (3) The Court must not give leave for the purposes of this section unless notice of intention to apply for it has been served on the Official Receiver.
- (4) If the Official Receiver is of opinion that it is contrary to the public interest that an application under subsection (3) should be granted, the Official Receiver must attend the hearing of, and oppose the granting of, the application.
- (5) In subsection (1)—

*company* (公司) has the meaning given by section 168C(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

**481. Minutes of directors' meetings and directors' resolutions***(Amended 35 of 2018 s. 55)*

- (1) A company must cause the following to be recorded—*(Amended 35 of 2018 s. 55)*
  - (a) minutes of all proceedings at meetings of its directors; and

- (b) 董事在不舉行會議的情況下通過的所有決議。(由 2018 年第 35 號第 55 條修訂)
- (2) 公司須備存第 (1) 款所指的紀錄最少 10 年，該期間自以下日期起計 —— (由 2018 年第 35 號第 55 條修訂)
- (a) 有關會議舉行的日期；或
- (b) 在不舉行會議的情況下通過有關決議的日期。(由 2018 年第 35 號第 55 條修訂)
- (3) 如公司違反第 (1) 或 (2) 款，該公司及其每名責任人均屬犯罪，可各處第 5 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款 \$1,000。
- (4) 本條不適用於在《2018 年公司 (修訂) (第 2 號) 條例》(2018 年第 35 號) 第 55 條生效日期 \* 前在不舉行會議的情況下通過的決議。(由 2018 年第 35 號第 55 條增補)

編輯附註：

\* 生效日期：2019 年 2 月 1 日。

#### 482. 作為證據的紀錄

- (1) 按照第 481 條記錄的會議紀錄，如看來是由有關會議的主席簽署，或看來是由下一次董事會議的主席簽署，即為該有關會議議事程序的證據。
- (2) 如董事會議的議事程序根據第 (1) 款藉會議紀錄證明，則在相反證明成立之前 —— (由 2018 年第 35 號第 56 條修訂)
- (a) 該會議須視為已妥為舉行及召開；
- (b) 該會議上的所有議事程序均須視為已妥為完成；及
- (c) 所有在該會議上作出的委任均須視為有效。
- (3) 第 (2)(c) 款受第 456(3) 及 459(2) 條規限。

- (b) all resolutions passed by its directors without a meeting.
- (2) A company must keep the records under subsection (1) for at least 10 years from— (*Amended 35 of 2018 s. 55*)
- (a) the date of the meeting; or
- (b) the date of the passing of the resolution without a meeting.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) This section does not apply to a resolution passed without a meeting before the commencement date\* of section 55 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018). (*Added 35 of 2018 s. 55*)

(*Amended 35 of 2018 s. 55*)

Editorial Note:

\* Commencement date: 1 February 2019.

#### 482. Minutes as evidence

- (1) Minutes recorded in accordance with section 481, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next directors' meeting, are evidence of the proceedings at the meeting.
- (2) If the proceedings at a meeting of directors are evidenced by minutes under subsection (1), then, until the contrary is proved— (*Amended 35 of 2018 s. 56*)
- (a) the meeting is to be regarded as having been duly held and convened;

**483. 關於私人公司唯一董事的決定的書面紀錄**

- (1) 如任何私人公司只有一名董事，而該董事作出任何符合以下說明的決定——
  - (a) 可由董事會議作出；並
  - (b) 具有猶如已在該會議上獲同意的效力，  
則該董事須在作出該項決定後的 7 日內，向該公司提供一份該項決定的書面紀錄，但如該項決定是以書面決議方式作出，則屬例外。
- (2) 如董事按照第 (1) 款，向有關公司提供一份關於某決定的書面紀錄，則該紀錄即屬該董事已作出該決定的充分證據。
- (3) 公司須備存按照第 (1) 款向該公司提供的書面紀錄最少 10 年，該期間自有關決定作出的日期起計。
- (4) 任何董事違反第 (1) 款，即屬犯罪。
- (5) 如公司違反第 (3) 款，該公司及其每名責任人均屬犯罪。
- (6) 任何人犯第 (4) 款所訂罪行，可處第 3 級罰款。
- (7) 任何人犯第 (5) 款所訂罪行，可處第 5 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另處罰款 \$1,000。

- (b) all proceedings at the meeting are to be regarded as having duly taken place; and
  - (c) all appointments at the meeting are to be regarded as valid.
- (3) Subsection (2)(c) is subject to sections 456(3) and 459(2).

**483. Written record of decision of sole director of private company**

- (1) If a private company has only one director and the director takes any decision that—
  - (a) may be taken in a meeting of directors; and
  - (b) has effect as if agreed in a meeting of directors,  
the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.
- (3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 10 years from the date of the decision.
- (4) A director who contravenes subsection (1) commits an offence.
- (5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.
- (6) A person who commits an offence under subsection (4) is liable to a fine at level 3.
- (7) A person who commits an offence under subsection (5) is liable to a fine at level 5 and, in the case of a continuing

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- (8) 即使董事違反第 (1) 款的規定，亦不影響任何該款所述的決定的有效性。
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offence, to a further fine of \$1,000 for each day during which the offence continues.

- (8) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.
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