

第 17 部**並非根據本條例組成但可根據本條例註冊的公司***(格式變更 — 2013 年第 1 號編輯修訂紀錄)***第 1 分部 —— 導言****806. 釋義**

在本部中 ——

不屬法定的章程文件 (non-statutory constitutional document) 就合資格公司而言，指組織或規管該公司的任何組織安排契據或其他文書；**合資格公司** (eligible company) 指 ——

- (a) 在 1865 年 5 月 1 日之後，依據本條例及《舊有公司條例》以外的任何條例組成的公司；或
- (b) 在上述日期之後，按照法律以其他方式組織的公司；

章程文件 (constitutional document) 就合資格公司而言，指 ——

- (a) 組織或規管該公司的條例；或
- (b) 該公司的不屬法定的章程文件。

第 2 分部 —— 合資格公司的註冊**807. 處長可將合資格公司註冊**

- (1) 處長可應合資格公司的申請，將該公司註冊為 ——
 - (a) 無限公司；或
 - (b) 擔保有限公司。

Part 17**Companies not Formed, but Registrable, under this Ordinance***(Format changes—E.R. 1 of 2013)***Division 1—Preliminary****806. Interpretation**

In this Part—

constitutional document (章程文件), in relation to an eligible company, means—

- (a) an Ordinance constituting or regulating the company; or
- (b) a non-statutory constitutional document of the company;

eligible company (合資格公司) means a company—

- (a) formed after 1 May 1865 in pursuance of an Ordinance other than this Ordinance or a former Companies Ordinance; or
- (b) otherwise constituted after that date according to law;

non-statutory constitutional document (不屬法定的章程文件), in relation to an eligible company, means any deed of settlement, or other instrument, constituting or regulating the company.**Division 2—Registration of Eligible Companies****807. Registrar may register eligible company**

- (1) The Registrar may, on application by an eligible company, register the company as—
 - (a) an unlimited company; or

- (2) 第 (1) 款所指的申請，須符合指明格式。
- (3) 第 (1) 款所指的申請，須隨附 ——
 - (a) 有關的合資格公司的每份章程文件的文本；及
 - (b) (如屬要求註冊為擔保有限公司的申請)符合第 810(2) 條的決議的文本。
- (4) 根據第 (1) 款進行的註冊，不會僅因有關的合資格公司註冊的目的是為進行清盤，而屬無效。

- (b) a company limited by guarantee.
- (2) An application for the purposes of subsection (1) must be in the specified form.
- (3) An application for the purposes of subsection (1) must be accompanied by—
 - (a) a copy of every constitutional document of the eligible company; and
 - (b) in the case of an application for registration as a company limited by guarantee, a copy of the resolution that complies with section 810(2).
- (4) A registration under subsection (1) is not invalid by reason only of it having taken place with a view to the eligible company being wound up.

808. 對處長註冊的權力的一般限制

- (1) 如合資格公司的成員的法律責任被某條例所限定，或是按照法律以其他方式予以限定，則處長不得根據本部將該公司註冊。
- (2) 除非合資格公司符合以下說明，否則處長不得根據本部將該公司註冊為擔保有限公司 ——
 - (a) 如該公司只有英文名稱 ——
 - (i) 該公司擬註冊的名稱的最後一個字為“Limited”；及
 - (ii) 該公司可能使用的相應中文名稱的最後 4 個中文字為“有限公司”；
 - (b) 如該公司只有中文名稱 ——
 - (i) 該公司擬註冊的名稱的最後 4 個中文字為“有限公司”；及
 - (ii) 該公司可能使用的相應英文名稱的最後一個字為“Limited”；或

808. General restrictions on Registrar's power to register

- (1) If the liability of the members of an eligible company is limited by an Ordinance or otherwise according to law, the Registrar must not register the company under this Part.
- (2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless—
 - (a) if the company has an English name only—
 - (i) the name by which the company is to be registered has “Limited” as the last word of that name; and
 - (ii) a Chinese equivalent of it that the company may use has “有限公司” as the last 4 Chinese characters of the equivalent;
 - (b) if the company has a Chinese name only—
 - (i) the name by which the company is to be registered has “有限公司” as the last 4 Chinese characters of that name; and

- (c) 如該公司兼有中文名稱及英文名稱 ——
- (i) 該公司擬註冊的英文名稱的最後一個字為“Limited”；及
 - (ii) 該公司擬註冊的中文名稱的最後 4 個中文字為“有限公司”。

- (ii) an English equivalent of it that the company may use has “Limited” as the last word of the equivalent; or
- (c) if the company has both an English name and a Chinese name—
 - (i) the English name by which the company is to be registered has “Limited” as the last word of that name; and
 - (ii) the Chinese name by which the company is to be registered has “有限公司” as the last 4 Chinese characters of that name.

809. 處長不得在未經成員同意下進行註冊

- (1) 除非合資格公司在為將該公司註冊為無限公司而召開的公司成員大會上，獲得過半數出席該大會的成員同意將該公司註冊為無限公司，否則處長不得根據本部將該公司註冊為無限公司。
- (2) 除非合資格公司在為將該公司註冊為擔保有限公司而召開的公司成員大會上，獲得最少 75% 出席該大會的成員同意將該公司註冊為擔保有限公司，否則處長不得根據本部將該公司註冊為擔保有限公司。
- (3) 為施行本條，如有要求以投票方式表決的情況，則在計算過半數成員或 75% 成員人數時，須顧及每名成員按照有關的合資格公司的規例有權投下的票數。
- (4) 在本條中，提述出席成員大會的成員 ——
 - (a) 即提述親自出席的成員；或
 - (b) (如有關的合資格公司的規例容許委派代表的話) 即提述委派代表出席的成員。

809. Registrar must not register without members' assent

- (1) The Registrar must not register an eligible company under this Part as an unlimited company unless there is assent to the registration by a majority of the members present at a general meeting of the company convened for the purpose.
- (2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless there is assent to the registration by at least 75% of the members present at a general meeting of the company convened for the purpose.
- (3) For the purposes of this section, in computing a majority, or 75%, of the members where a poll is demanded, the number of votes to which each member is entitled according to the eligible company's regulations must be taken into account.
- (4) In this section, a reference to a member present at a general meeting is—
 - (a) a reference to a member present in person; or
 - (b) if proxies are allowed by the eligible company's regulations, a reference to a member present by proxy.

810. 如無法議聲明擔保的款額則處長不得進行註冊

- (1) 除非合資格公司的成員通過符合第 (2) 款的決議，否則處長不得根據本部將該公司註冊為擔保有限公司。
- (2) 上述決議須聲明，每名身為合資格公司的成員的人，均承諾若該公司在該人是該公司的成員期間或不再是該公司的成員之後的一年內清盤，該人會分擔支付該人須付的一筆不超過指明款額的款額，作為該公司的資產，以——
 - (a) 支付該公司在該人不再是該公司的成員之前所訂約承擔的債項及債務；
 - (b) 支付該公司清盤的費用及開支；及 (由 2018 年第 35 號第 82 條修訂)
 - (c) 調整分擔人之間的權利。
- (3) 就第 (1) 款而言，有關決議是在本分部的生效日期[#]之前、當日或之後通過，並不相干。

編輯附註：

[#] 生效日期：2014 年 3 月 3 日。

811. 合資格公司須繳付註冊費用

在處長根據本部將合資格公司註冊之前，該公司須就該項註冊，向處長繳付訂明費用。

812. 處長須發出註冊證明書**810. Registrar must not register without resolution declaring amount of guarantee**

- (1) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless the members pass a resolution that complies with subsection (2).
- (2) The resolution must declare that each person who is a member of the eligible company undertakes that if the company is wound up while the person is such a member, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—
 - (a) for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;
 - (b) for the payment of the costs and expenses of winding up the company; and (*Amended 35 of 2018 s. 82*)
 - (c) for the adjustment, among the contributories, of their rights.
- (3) For the purposes of subsection (1), it is irrelevant whether the resolution is passed before, on or after the commencement date[#] of this Division.

Editorial Note:

[#] Commencement date: 3 March 2014.

811. Eligible company must pay registration fee

Before the Registrar registers an eligible company under this Part, the company must pay a prescribed fee to the Registrar for the registration.

812. Registrar must issue certificate of registration

處長如根據本部將合資格公司註冊，須向該公司發出一份有其簽署或印有其簽署的註冊證明書。

On registering an eligible company under this Part, the Registrar must issue to it a certificate of registration, with the Registrar's signature or printed signature.

第 3 分部 —— 註冊的後果

Division 3—Consequences of Registration

813. 本分部的適用範圍

如有合資格公司根據本部註冊為無限公司或擔保有限公司，則本分部適用。

813. Application of Division

This Division applies if an eligible company is registered under this Part as an unlimited company or a company limited by guarantee.

814. 合資格公司的地位、財產、權利及法律責任

- (1) 合資格公司一旦根據第 812 條獲發註冊證明書，即視為已根據本條例成立為法團的無限公司或擔保有限公司（視何者適用而定）。
- (2) 第 (1) 款不具有為合資格公司設立新的法律實體的效力。
- (3) 註冊一事並不影響合資格公司的財產。
- (4) 註冊一事並不影響合資格公司在以下方面的權利及法律責任——
 - (a) 該公司在註冊之前招致或由他人代為招致的債項或義務，或在註冊之前他人欠該公司的債項或義務；或
 - (b) 該公司在註冊之前訂立或由他人代為訂立的合約。

814. Status, property, rights and liabilities of eligible company

- (1) On being issued with a certificate of registration under section 812, the eligible company is to be regarded as having been incorporated under this Ordinance as an unlimited company or a company limited by guarantee, whichever is applicable.
- (2) Subsection (1) does not operate to create a new legal entity for the eligible company.
- (3) The registration does not affect the eligible company's property.
- (4) The registration does not affect the eligible company's rights and liabilities in respect of—
 - (a) any debt or obligation incurred by or on behalf of, or owed to, the company before the registration; or
 - (b) any contract entered into by or on behalf of the company before the registration.

815. 現有的法律程序繼續進行

- (1) 除第 (2) 款另有規定外，在合資格公司註冊時仍然待決的訴訟或其他法律程序，不論是由該公司、該公司的高級人員或該公司的成員提出的，亦不論是否針對該公司、該公司的高級人員或該公司的成員提出的，均可藉同樣方式繼續進行，猶如沒有該項註冊一樣。

815. Continuation of existing proceedings

- (1) Subject to subsection (2), any action or other legal proceedings that are, at the time of registration, pending by or against the eligible company, or any of its officers or members, may be continued in the same manner as if the registration had not taken place.

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- (2) 不得針對合資格公司的成員的財物發出執程序文件，以執行在上述的待決訴訟或法律程序中取得的任何判決、判令或命令。
- (3) 如合資格公司的財產及財物不足以履行上述判決、判令或命令，則可取得一項將該公司清盤的命令。

816. 現有的章程文件繼續有效

- (1) 合資格公司的章程文件的條文，須以同樣方式並在附有同樣附帶條件的情況下，視為該公司的條件及規例，猶如該等條文是假使該公司是根據本條例組成便已載於該公司組成所需的章程細則內一樣。
- (2) 在第 (1) 款中，提述合資格公司的章程文件，就註冊為擔保有限公司的合資格公司而言，包括符合第 810(2) 條的決議。

817. 合資格公司可用章程細則替代不屬法定的章程文件

- (1) 合資格公司可用章程細則，替代該公司的不屬法定的章程文件，藉以更改該公司的章程的形式。
- (2) 上述更改須藉特別決議作出。
- (3) 在第 (5) 及 (6) 款的規限下，假使有關的合資格公司是根據本條例組成便會是私人公司，則第 89 及 91 條在其關乎第 (4) 款指明的事宜的範圍內，適用於有關更改（在適用範圍內）。
- (4) 為施行第 (3) 款而指明的事宜是——
 - (a) 在通過第 89 條所指的關於作出修改的決議後相應作出的事宜；及

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- (2) Execution must not be issued against the effects of a member of the eligible company on any judgment, decree or order obtained in any such pending action or proceedings.
- (3) If the eligible company's property and effects are insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

816. Continuation of existing constitutional document

- (1) The provisions in a constitutional document of the eligible company are to be regarded as conditions and regulations of the company in the same manner and with the same incidents as if those provisions were, had the company been formed under this Ordinance, contained in the articles with which the company would have been formed.
- (2) In subsection (1), a reference to a constitutional document of an eligible company includes, in the case of an eligible company registered as a company limited by guarantee, the resolution that complies with section 810(2).

817. Eligible company may substitute articles for non-statutory constitutional document

- (1) The eligible company may alter the form of its constitution by substituting articles for a non-statutory constitutional document of the company.
- (2) An alteration must be made by special resolution.
- (3) Subject to subsections (5) and (6), so much of sections 89 and 91 as relate to the matters specified in subsection (4) applies to an alteration (so far as applicable) if the eligible company, had it been formed under this Ordinance, would have been a private company.
- (4) The matters specified for the purposes of subsection (3) are—

- (b) 向原訟法庭提出的、要求取消對私人公司的宗旨作出修改的申請。
- (5) 在第 89(7) 條中，提述經修改的有關公司章程細則的文本，須理解為根據本條用以替代合資格公司的不屬法定的章程文件的章程細則的文本。
- (6) 自根據第 89 條將用以替代合資格公司的不屬法定的章程文件的公司章程細則的文本交付處長起，或自有關修改不可被原訟法庭藉命令取消的日期起（兩者當中以較後者為準）——
- (a) 該章程細則適用於該公司的方式，須猶如該公司是根據本條例採用該章程細則註冊的私人公司一樣；及
- (b) 該不屬法定的章程文件不再適用於該公司。
- (7) 根據第 (1) 款作出更改時，可同時根據第 89 條修改合資格公司的宗旨，也可不修改該宗旨。

818. 本條例適用於合資格公司

- (1) 在第 819 條的規限下，本條例以同樣方式在各方面適用於合資格公司及其高級人員、成員、分擔人及債權人，猶如該公司是根據本條例組成一樣。
- (2) 即使合資格公司的章程文件載有任何規定，如本條例的條文關乎無限公司註冊為有限公司，該條文適用於該公司。

- (a) matters consequential on the passing of a resolution for an alteration under section 89; and
- (b) an application to the Court for the cancellation of an alteration of a private company's objects.
- (5) A reference in section 89(7) to a copy of the company's articles as altered is to be read as a copy of the articles substituted for a non-statutory constitutional document of the eligible company under this section.
- (6) On the delivery to the Registrar under section 89 of a copy of the company's articles substituted for a non-statutory constitutional document of the eligible company or on the date when the alteration is no longer liable to be cancelled by order of the Court, whichever is the later—
- (a) the articles apply to the company in the same manner as if it were a private company registered under this Ordinance with the articles; and
- (b) the non-statutory constitutional document ceases to apply to the company.
- (7) An alteration may be made under subsection (1) with or without an alteration of the eligible company's objects under section 89.

818. This Ordinance applies to eligible company

- (1) Subject to section 819, this Ordinance applies to the eligible company and its officers, members, contributories and creditors in the same manner in all respects as if the company had been formed under this Ordinance.
- (2) Despite anything in a constitutional document of the eligible company, a provision of this Ordinance applies to the company if the provision relates to an unlimited company's registration as a limited company.

819. 第 818(1) 條的例外情況

- (1) 除非合資格公司藉特別決議，採納根據第 78 條訂明的章程細則範本的任何或全部條文作為其章程細則，否則不得採納該等條文作為其章程細則。
- (2) 在不抵觸第 820 條的規定下，合資格公司沒有更改關乎該公司的條例的條文的權力。

820. 合資格公司更改章程的權力

合資格公司如憑藉其章程文件具有更改其章程或規例的權力，本條例不減損該權力。

819. Exceptions to section 818(1)

- (1) The eligible company may not adopt as its articles any or all of the provisions of the model articles prescribed under section 78, unless those provisions are adopted by special resolution.
- (2) Subject to section 820, the eligible company does not have any power to alter a provision in an Ordinance relating to the company.

820. Eligible company's power to alter constitution

This Ordinance does not derogate from any power, vested in the eligible company, by virtue of a constitutional document of the company, of altering its constitution or regulations.
