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- (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" includes any body corporate or corporation. (*Added 4 of 1976 s. 2*)
- [c.f. 1929 c. 23 s. 380 U.K.]*

3. (*Repealed 6 of 1984 s. 3*)

PART I

INCORPORATION OF COMPANIES AND MATTERS
INCIDENTAL THERETO

Memorandum of Association

4. Mode of forming incorporated company

(1) Any 2 or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association (which must be printed in the English language) and otherwise complying with the requirements of this Ordinance in respect of registration, form an incorporated company, with or without limited liability. (*Amended 6 of 1984 s. 4*)

(2) Such a company may be either—

- (a) a company having, or deemed by virtue of subsection (3) to have, the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Ordinance termed a company limited by shares); or (*Amended 6 of 1984 s. 4*)
- (b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Ordinance termed a company limited by guarantee); or
- (c) a company not having any limit on the liability of its members (in this Ordinance termed an unlimited company).

(3) A company whose memorandum contains a condition in accordance with the fourth paragraph of the form set out in Table B in the First Schedule shall be deemed to be, and, in the case of such a company registered at the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), always to have been, a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. (*Added 6 of 1984 s. 4*)

[c.f. 1929 c. 23 s. 1 U.K.]

5. Requirements with respect to memorandum

- (1) The memorandum of every company must state—
- (a) the name of the company, with "Limited" as the last word of the name in the case of a company limited by shares or by guarantee;
- (b) the objects of the company. (*Amended 1 of 1949 s. 3*)
- (2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

* Commencement date—31.8.1984.

(4) In the case of a company having a share capital—

- (a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (b) no subscriber of the memorandum may take less than one share;
- (c) each subscriber must write opposite to his name the number of shares he takes.

(5) The powers of a company formed on or after the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984) shall include, unless expressly excluded or modified by the memorandum or articles, the powers set forth in the Seventh Schedule. (*Added 6 of 1984 s. 5*)

[*cf. 1929 c. 23 s. 2 U.K.*]

6. Signature of memorandum

The memorandum shall be signed by each subscriber in the presence of a witness who shall attest the signature by signing his name and stating his occupation and address in legible form.

(*Replaced 6 of 1984 s. 6*)

[*cf. 1948 c. 38 s. 3 U.K.*]

7. Restriction on alteration of memorandum

A company may not alter its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Ordinance.

(*Amended 6 of 1984 s. 7*)

[*cf. 1929 c. 23 s. 4 U.K.*]

8. Mode in which and extent to which objects may be altered

(1) A company may, by special resolution of which notice has been duly given to all the members of the company (including, for the purposes of this section, members who are not entitled to such notice under the articles of the company), alter the conditions of its memorandum with respect to the objects of the company by abandoning or restricting any of those objects or by adopting any new object which could lawfully have been contained in the memorandum at the time of its registration;

Provided that, if an application is made to the court in accordance with this section for the alteration to be annulled, the alteration shall not have effect except in so far as it is confirmed by the court. (*Replaced 6 of 1984 s. 8*)

(2) An application under this section may be made—

- (a) by the holders of not less in the aggregate than 5 per cent in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than 5 per cent of the company's members; or
- (b) by the holders of not less than 5 per cent of the company's debentures entitling the holders to object to alterations of its objects.

(3) An application under this section shall be made within 28 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge that were issued or first issued before 15 February 1963, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company.

In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(6) (*Repealed 6 of 1984 s. 8*)

(7) Where a company passes a resolution altering its objects—

- (a) if no application is made with respect thereto under this section, it shall within 15 days after the end of the period for making such an application deliver to the Registrar a printed copy of its memorandum as altered and certified as correct by an officer of the company; and
- (b) if such an application is made it shall—
 - (i) forthwith give notice of that fact to the Registrar; and
 - (ii) within 15 days after the date of any order annulling or confirming the alteration, deliver to the Registrar an office copy of the order and, in the case of an order confirming the alteration, a printed copy of its memorandum as altered and certified as correct by an officer of the company.

The court may by order at any time extend the time for the delivery of documents to the Registrar under paragraph (b) of this subsection for such period as the court may think proper.

* Commencement date—31.8.84.

(8) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (7), 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. *(Amended 7 of 1990 s. 2)*

(9) In relation to a resolution for altering the conditions of a company's memorandum with respect to the objects of the company passed before the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), the provisions of this section in force immediately before such commencement shall continue to have effect as if that Ordinance had not been enacted. *(Replaced 6 of 1984 s. 8)*

(Replaced 4 of 1963 s. 3. Amended 6 of 1984 s. 8)
[*cf. 1929 c. 38 s. 5 U.K.*]

Articles of Association

9. Articles prescribing regulations for companies

There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(Amended 15 of 1955 s. 2)
[*cf. 1929 c. 23 s. 6 U.K.*]

10. Regulations required in case of unlimited company or company limited by guarantee

(1) In the case of an unlimited company the articles shall state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered. *(Amended 6 of 1984 s. 9)*

(2) In the case of a company limited by guarantee, the articles shall state the number of members with which the company proposes to be registered. *(Amended 6 of 1984 s. 9)*

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase. 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 and, for continued default, to a daily default fine. *(Amended 7 of 1990 s. 2)*

[*cf. 1929 c. 23 s. 7 U.K.*]

* Commencement date—31.8.84.

11. Adoption and application of Table A

(1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

[*cf. 1929 c. 23 s. 8 U.K.*]

12. Printing and signature of articles

Articles shall—

- (a) be printed in the English language;
- (b) be divided into paragraphs numbered consecutively;
- (c) be signed by each subscriber of the memorandum of association in the presence of a witness who shall attest the signature by signing his name and stating his occupation and address in legible form.

(Replaced 6 of 1984 s. 10)
[*cf. 1948 c. 38 s. 9 U.K.*]

13. Alteration of articles by special resolution

(1) Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(1A) Nothing in this section shall authorize a company to make any alteration or addition in its articles which is inconsistent with any special rights attached to a class of shares in the company. *(Added 6 of 1984 s. 11)*

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Ordinance, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

[*cf. 1929 c. 23 s. 10 U.K.*]

Form of Memorandum and Articles

14. Statutory forms of memorandum and articles

The form of—

- (a) the memorandum of association of a company limited by shares;

- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;
- (c) the memorandum and articles of association of a company limited by guarantee and having a share capital;
- (d) the memorandum and articles of association of an unlimited company having a share capital;

shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule, or as near thereto as circumstances admit.

[*cf.* 1929 c. 23 s. 11 U.K.]

Registration

15. Registration of memorandum and articles

The memorandum and the articles, if any, shall be delivered to the Registrar and the Registrar shall retain and register them.

[*cf.* 1929 c. 23 s. 12 U.K.]

16. Effect of registration

(1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

[*cf.* 1929 c. 23 s. 13 U.K.]

17. Power of company to hold lands

(1) Every company incorporated under this Ordinance shall have power to acquire, hold and dispose of land. (*Replaced 74 of 1974 s. 3*)

(2) For the purposes of this section, "land" includes any estate or interest in land, buildings, messuages and tenements of what nature or kind soever. (*Replaced 25 of 1958 s. 2*)

[*cf.* 1929 c. 23 s. 14 U.K.]

18. Conclusiveness of certificate of incorporation

(1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this

Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance.

(2) A statutory declaration by a solicitor of the High Court, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance. (*Amended 92 of 1975 s. 59*)

[*cf.* 1929 c. 23 s. 15 U.K.]

19. Unlimited companies may be re-registered as limited

(1) A company which, at or after the commencement* of the Companies (Amendment) Ordinance 1984 (6 of 1984), is registered as unlimited may be re-registered as limited if a special resolution that it should be so re-registered (complying with the requirement of subsection (2)) is passed and an application in that behalf, framed in the prescribed form and signed by a director or by the secretary of the company, is lodged with the Registrar together with the documents mentioned in subsection (3) not earlier than the day on which the copy of the resolution forwarded to him in pursuance of section 117 is received by him; and the Eighth Schedule shall have effect for the purposes of this section as if for references in that Schedule to the registration of a company there were substituted references to its re-registration under this section.

(2) The said requirement is that the resolution—

(a) shall state the manner in which the liability of the members of the company is to be limited and, if the company is to have a share capital, what that capital is to be; and

(b) shall—

(i) if the company is to be limited by guarantee, provide for the making of such alterations in its memorandum and such alterations in and additions to its articles as are requisite to bring the memorandum and articles, both in substance and in form, into conformity with the requirements of this Ordinance with respect to the substance and form of the memorandum and articles of a company to be formed thereunder whose condition as to mode of limitation of liability and possession of a share capital (or want of it) will be similar to the condition of the company as to those matters which will obtain upon its re-registration;

* Commencement date—31.8.84.

(ii) if the company is to be limited by shares, provide for the making of such alterations in its memorandum as are requisite to bring it, both in substance and in form, into conformity with the requirements of this Ordinance with respect to the substance and form of the memorandum of a company to be formed thereunder as a company so limited, and such alterations in and additions to its articles as are requisite in the circumstances.

(3) The documents referred to in subsection (1) are a printed copy of the memorandum as altered in pursuance of the resolution and a printed copy of the articles as so altered.

(4) The Registrar shall retain the application and other documents lodged with him under subsection (1) and shall issue to the company a certificate of incorporation appropriate to the status to be assumed by the company by virtue of this section; and upon the issue of the certificate—

(a) the status of the company shall, by virtue of the issue, be changed from unlimited to limited; and

(b) the alterations in the memorandum specified in the resolution and the alterations in, and additions to, the articles so specified shall, notwithstanding anything in this Ordinance, take effect.

(5) A certificate of incorporation issued by virtue of this section shall be conclusive evidence that the requirements of this section with respect to re-registration and of matters precedent and incidental thereto have been complied with, and that the company was authorized to be re-registered under this Ordinance in pursuance of this section and was duly so re-registered.

(6) In the event of the winding up of a company re-registered in pursuance of this section, the following provisions shall have effect—

(a) notwithstanding section 170(1)(a), a past member of the company who was a member thereof at the time of re-registration shall, if the winding up commences within the period of 3 years beginning with the day on which the company is re-registered, be liable to contribute to the assets of the company in respect of debts and liabilities of its contracted before that time;

(b) where no persons who were members of the company at that time are existing members of the company, a person who, at that time, was a present or past member thereof shall, subject to section 170(1)(a) and paragraph (a) of this subsection, but notwithstanding section 170(1)(c), be liable to contribute as aforesaid notwithstanding that the existing members have satisfied the contributions required to be made by them in pursuance of this Ordinance;

(c) notwithstanding section 170(1)(d) and (e), there shall be no limit on the amount which a person who, at that time, was a past or

present member of the company is liable to contribute as aforesaid.

(Replaced 6 of 1984 s. 12)
[cf. 1967 c. 81 s. 44 U.K.]

Provisions with respect to Names of Companies

20. Restriction on registration of companies by certain names

(1) A company shall not be registered by a name—

(a) which is the same as a name appearing in the Registrar's index of company names;

(b) which is the same as that of a body corporate incorporated or established under an Ordinance;

(c) the use of which by the company would, in the opinion of the Governor, constitute a criminal offence; or

(d) which, in the opinion of the Governor, is offensive or otherwise contrary to the public interest.

(2) Except with the consent of the Governor no company shall be registered by a name which—

(a) in the opinion of the Governor, would be likely to give the impression that the company is connected in any way with Her Majesty's Government or the Government of Hong Kong or any department of either Government; or

(b) includes any word or expression for the time being specified in an order made under section 22B.

(3) In determining for the purposes of subsection (1)(a) or (b) whether one name is the same as another—

(a) the following shall be disregarded—

(i) the definite article, where it is the first word of the name;

(ii) the following words and expressions where they appear at the end of the name, that is to say—

(A) "company";

(B) "and company";

(C) "company limited";

(D) "and company limited";

(E) "limited";

(F) "unlimited"; and

(G) "public limited company";

(iii) abbreviations of any of the words or expressions referred to in subparagraph (ii) where they appear at the end of the name; and

- (iv) type and case of letters, accents, spaces between letters and punctuation marks; and
- (b) "and" and "&", "Hong Kong", "Hongkong" and "HK", and "Far East" and "FE" are respectively to be taken as the same.

(Replaced 60 of 1990 s. 3)
[cf. 1985 c. 6 s. 26 U.K.]

*20A. (Repealed 60 of 1990 s. 4)

21. Power to dispense with "limited" in name of charitable and other companies

(1) Where it is proved to the satisfaction of the Registrar that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Registrar may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Registrar—

- (a) that the objects of a company registered under this Ordinance as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and
- (b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Registrar may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word "Limited", and subsections (4) and (5) of section 22 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Registrar under this section may be granted on such conditions and subject to such regulations as the Registrar thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and (where the grant is under subsection (1)) shall, if the Registrar so directs, be inserted in the memorandum and articles, or in one of those documents.

* Sec 60 of 1990 s. 11.

(4) A body to which a licence is granted under this section shall be exempted from the provisions of this Ordinance relating to the use of the word "Limited" as any part of its name, the publishing of its name and the sending of lists of members to the Registrar.

(5) A licence under this section may at any time be revoked by the Registrar, and upon revocation the Registrar shall enter the word "Limited" at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that before a licence is so revoked, the Registrar shall give to the body notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) A body in respect of which a licence under this section is in force shall not have power to alter its memorandum or articles unless—

- (a) it gives to the Registrar the same notice of the resolution relating to the proposed alteration as it is required to give to the members of the body; and
- (b) the proposed alteration is approved in writing by the Registrar.

(7) Where a body in respect of which a licence under this section is in force alters its memorandum or articles, the Registrar may (unless he sees fit to revoke the licence) vary the licence by making it subject to such conditions and regulations as the Registrar thinks fit, in lieu of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(8) Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" is revoked, the body shall within a period of 6 weeks from the date of revocation or such longer period as the Registrar may think fit to allow, change its name to a name which does not contain those words, and—

- (a) the notice to be given under the proviso to subsection (5) to that body shall include a statement to the effect of the foregoing provisions of this subsection; and
- (b) subsections (4) and (5) of section 22 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(9) If a body referred to in subsection (8) makes default in complying with the requirements of that subsection, it shall be liable to a fine and, for continued default, to a daily default fine. (Amended 7 of 1990 s. 2)

(10) Without prejudice to section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), this section shall apply in relation to any body in respect of which a licence (being a licence granted under this Ordinance in respect of the registration of that body as a company with limited liability without the addition of the word "Limited" to its name) is in force at the commencement of the Companies (Amendment) Ordinance 1978 (51 of 1978)