

Updating Your Study Manual

Instructions for Inserting Version 1.8

The followings serve as the instructions for updating **Topic 2: Principles of relevant Hong Kong Law and the Companies Ordinance** of Study Manual 1 for the Licensing Examination for Securities and Futures Intermediaries. Please be reminded that only the updated sections are provided for downloading. You may replace the relevant sections with this updated version for the study manual you possess.

Instructions:

1. Download and print out the following pages.
 2. **Remove** the original front page and **Insert** the updated front page.
 3. **Remove** pages 2-9 to 2-10 and **Insert** new pages 2-9 to 2-10.
 4. **Remove** pages 2-15 to 2-16 and **Insert** new pages 2-15 to 2-16.
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STUDY MANUAL FOR

PAPER 1

FUNDAMENTALS OF

SECURITIES AND FUTURES REGULATION

of

The Licensing Examination
for Securities and Futures Intermediaries

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Administrative Tribunals

- 1.27 Administrative tribunals have been set up to quicken the legal process as the processes of the law courts can be quite lengthy, costly and time consuming. Tribunals need less strict levels of proof than do the Courts, have less formal procedures and complete hearings quickly. They are established by the Government as needed. For example the Market Misconduct Tribunal and the Securities and Futures Appeals Tribunal are set up under the SFO to hear market misconduct cases and appeals against decisions of the SFC respectively. These may require the members of the tribunals to have a high level of knowledge of the underlying issues.

Arbitration

- 1.28 Business disputes may be resolved by arbitration. Arbitration is a process of resolving a dispute which uses one or more neutral third parties whose decision is accepted as binding by the parties who are engaged in dispute.
- 1.29 The Hong Kong International Arbitration Centre was set up to provide domestic arbitration, where both parties are in Hong Kong, and for international arbitration where one of the parties is located overseas. The Arbitration Ordinance provides the statutory framework for arbitration. The advantages of arbitration are said to be that it is fast, cheap, informal and private. Arbitration is provided for in the SFO as a means of resolving disputes arising from leveraged foreign exchange trading.

Revision questions:

- Question 4: Name the highest court in Hong Kong and who presides over it.
- Question 5: What is arbitration?
- Question 6: Describe a fiduciary relationship. Is a bank a fiduciary?
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2 Companies Ordinance ('CO') and related matters

- 2.1 A basic knowledge of company law and companies is becoming increasingly important, particularly as the new regulatory regime for securities and futures is based on the requirement that a licensed person must be a company or a body corporate. The CO permits the formation of a company by one or more

persons (s.4, CO). The CO also provides that one member constitutes a quorum for a meeting of a company having only one member.

Separate legal entity

- 2.2 A company is a legal entity distinct from its members. It is a legal person and can make contracts, take legal action, sue and be sued and own property and can commit crimes and torts. It also has perpetual succession and will only cease to exist if it is dissolved. It can be a limited company, the normal form of most companies and then the liability of its members is limited.

Private, public and listed companies

Private company (s.29, CO)

- 2.3 A private company is a company that:
- restricts the right to transfer its shares;
 - may not have more than 50 members (excluding employees present and past who are members or continue to be members respectively); and
 - may not offer shares (or debentures) to the public.

Public company

- 2.4 A public company is one that is not a private company, i.e. does not meet the requirements for a private company stated above.

Listed company

- 2.5 A listed company is one that satisfies the listing requirements of an exchange and whose shares or debentures have been admitted to listing on the exchange. The shares or debentures are then traded on the exchange unless suspended or delisted for any reason.

Memorandum and Articles of Association

- 2.6 The memorandum and articles of association of a company are considered to be the constitution of the company and form an agreement between the company and its members. The memorandum contains provisions which are mainly concerned with the relationship between the company and outsiders. The articles of association prescribe regulations for the internal management and operations of the company.

Special resolution (s.116, CO)

2.26 A special resolution is one passed by at least 75% of members at a general meeting (vote in person or, where proxies are allowed, by proxy) of which 21 days notice specifying the intention to pass the resolution has been given. Examples of matters which need special resolutions are:

- reduction of share capital;
- winding up of the company voluntarily or by court;
- alteration of objects, articles and conditions in memoranda that could have been included in the articles; and
- various buy-backs of shares affecting listed and unlisted companies.

A printed copy of a special resolution must be lodged with the Company Registrar within 15 days of its being passed.

Ordinary resolution

2.27 An ordinary resolution is not defined in the CO or in Table A. It generally refers to resolutions which may be passed by a simple majority of those present and voting at a meeting of members. Notice must be given.

Powers of shareholders

Powers exercisable by members in general meeting

2.28 These include:

- changes to articles and company name;
- matters relating to buybacks;
- issue of shares at a discount;
- alteration of capital including reduction;
- variation of class rights;
- corporate arrangements and reconstructions;
- appointment and removal of auditors;
- removal of directors;
- disposal of company assets;
- approval of payments for loss of office; and

- winding up petitions under court order and voluntary winding up.

Protection of members and minority shareholders

- 2.29 There are provisions in the CO and in Table A which enable a company to vary the rights of the holders of a class of shares. However if a variation is being processed, the holders of at least 10% of the nominal value of the shares of that class may petition the court to have the variation cancelled if it is against their interests. The decision of the court is final.
- 2.30 In addition to the above, an individual member may petition the court if the affairs of the company are being conducted in a manner prejudicial to the members generally (see paragraphs 2.32 and 2.33 for other situations where the interests of members are protected).

Protection of the interests of minority shareholders

(in relation to internal procedures)

- 2.31 The court will not generally interfere in internal management matters or where the company can deal with the matter by calling a meeting. This is the principle of majority power.
- 2.32 To ensure that the principle of majority power is not abused, certain safeguards are provided under the CO to protect the interests of minority shareholders:
- As seen in paragraph 2.26 above, a special resolution is required for certain matters.
 - Court sanction is required where the decision of the company will directly affect creditors.
 - Dissenting members may appeal to court to have certain resolutions cancelled.
 - Members with 5% of the paid-up capital which carries voting rights may requisition the directors to call a meeting; if the directors will not, the members may do so.
 - 100 members or 10% of the holders of the issued shares may ask the Financial Secretary to appoint an investigator into the company's affairs.
 - Under s.168A, CO, a member may apply to court for an order if he considers that the affairs of the company are being conducted in a manner prejudicial to the members generally or of some part of the members.
 - A member may petition for a winding up.