

- (3) (*Repealed 3 of 1997 s. 54*)
- (3A) The Financial Secretary may, by order published in the Gazette, amend the table of fees in the Eighth Schedule and the Fourteenth Schedule. (*Added 30 of 1994 s. 9*)
- (4) The amount of any fee prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred in relation to providing the service to which such fee relates. (*Added 41 of 1989 s. 4*)
- (5) The Financial Secretary may, by order published in the Gazette, amend the Sixteenth Schedule. (*Added 30 of 1999 s. 33*)  
(*Replaced 6 of 1984 s. 250*)  
[*cf. 1948 c. 38 s. 454 U.K.*]

## PART XIII

## PREVENTION OF EVASION OF THE SOCIETIES ORDINANCE

360A. (*Repealed 30 of 1999 s. 34*)

360B. **Power of Chief Executive in Council to order Registrar to refuse registration if satisfied that a company is being formed to evade the Societies Ordinance**

If the Registrar suspects that the memorandum and articles of association of a company delivered to him in accordance with section 15 relate to a company which is being formed with the object of circumventing—

- (a) the refusal of the Societies Officer to register or to exempt from registration a society under the Societies Ordinance (Cap. 151); or
- (b) the cancellation by the Societies Officer of the registration or exemption from registration of a society registered or exempted under the Societies Ordinance (Cap. 151); or
- (c) the prohibition of the operation or continued operation of a society by the Secretary for Security under section 8 of the Societies Ordinance (Cap. 151),

or for the purpose of otherwise evading or defeating the provisions of the Societies Ordinance (Cap. 151) or anything done thereunder, it shall be lawful for him to withhold registration of the same pending the receipt of the instructions of the Chief Executive in Council with respect thereto. In the event

- (3) (*由 1997 年第 3 號第 54 條廢除*)
- (3A) 財政司司長可藉憲報刊登的命令，將附表 8 及附表 14 的費用表修訂。  
(*由 1994 年第 30 號第 9 條增補。由 1997 年第 362 號法律公告修訂*)

(4) 根據本條訂明的任何費用的款額，不得藉參照因提供該等費用有關的服務而招致或相當可能會招致的行政或其他費用的款額而受到限制。  
(*由 1989 年第 41 號第 4 條增補*)

(5) 財政司司長可藉憲報刊登的命令修訂附表 16。  
(*由 1999 年第 30 號第 33 條增補*)

(*由 1984 年第 6 號第 250 條代替*)  
[*比照 1948 年 c. 38 s. 454 U.K.*]

## 第 XIII 部

## 防止規避《社團條例》的管制

360A. (*由 1999 年第 30 號第 34 條廢除*)

360B. **行政長官會同行政會議如信納一間公司正為規避《社團條例》的管制而組成即有權命令處長拒絕註冊**

如處長懷疑某間公司按照第 15 條向其交付的組織章程大綱及章程細則乃屬於——  
間正在組成的公司，而該公司組成的目的乃在於避免——

- (a) 社團事務主任根據《社團條例》(第 151 章)拒絕註冊社團或拒絕予其豁免註冊；或
- (b) 社團事務主任取消已根據《社團條例》(第 151 章)獲註冊或豁免的社團的註冊或註冊豁免；或
- (c) 保安局局長根據《社團條例》(第 151 章)第 8 條禁止社團的運作或繼續運作；

或在於以其他方式規避《社團條例》(第 151 章)的條文管制或使該等條文失效，或規避根據該條例所做的任何事情或使根據該條例所作的任何事情失效，則處長可在等待接獲行政長官會同行政會議就此事作出的指示期間，暫時不將該組織章程大綱及章程細則註冊。行政長官會同行政會議如信納該公司乃為任何上述目的而組成，可命令處長

of the Chief Executive in Council being satisfied that the company is being formed with any such object or for any such purpose, he may order the Registrar to refuse registration of the memorandum and articles, and upon receipt of such order, the Registrar shall, notwithstanding the provisions of section 15, refuse registration of the memorandum and articles.

(Amended 75 of 1992 s. 33; 118 of 1997 s. 18; 23 of 1999 s. 3)

**360C. Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off**

(1) If the Chief Executive in Council is satisfied that a company formed and registered under this Ordinance or any former Companies Ordinance would, if it were a society in respect of which the Societies Ordinance (Cap. 151) applied, be liable to have its registration or exemption from registration cancelled under section 5D or its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance, the Chief Executive in Council may order the Registrar of Companies to strike such company off the register of companies. (Amended 75 of 1992 s. 34; 118 of 1997 s. 19; 23 of 1999 s. 3)

(2) The Registrar shall thereupon strike the name of the company off the register, and shall publish notice thereof in the Gazette, and on such publication the company shall be dissolved.

Provided that the liability, if any, of every director, officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(3) A copy of such notice shall be sent to such company, and may either be sent by post or be delivered by hand addressed to the company at its registered office, or if no office has been registered, addressed to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, the notice may be sent or delivered to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum, but if none of such addresses is available or if for any other reason the Registrar considers it unlikely that any notice sent in pursuance of this subsection will come to the knowledge of the addressee, it shall be sufficient compliance with this subsection that notice in the Gazette shall have been published in accordance with subsection (2).

**360D. Certain sections not to apply**

Sections 290, 291(7) and 292 shall not apply in the case of a company struck off the register under section 360C.

拒絕將該公司的章程大綱及章程細則註冊，而處長在接獲該命令後，須拒絕將該公司的章程大綱及章程細則註冊，儘管有第 15 條的規定。

(由 1992 年第 75 號第 33 條修訂；由 1997 年第 118 號第 18 條修訂；由 1999 年第 23 號第 3 條修訂)

**360C. 行政長官會同行政會議有權命令將從事不良活動的公司剔除**

(1) 行政長官會同行政會議如信納一間根據本條例或任何前有《公司條例》組成及註冊的公司，假若其是《社團條例》(第 151 章)所適用的社團，其註冊或註冊豁免本可根據該條例第 5D 條取消者，或是保安局局長本可根據該條例第 8 條禁止其運作或繼續運作者，則行政長官會同行政會議可命令公司註冊處處長將該公司自公司登記冊中剔除。(由 1992 年第 75 號第 34 條修訂；由 1997 年第 118 號第 19 條修訂；由 1999 年第 23 號第 3 條修訂)

(2) 處長須隨即將有關公司的名稱自該登記冊中剔除，並須在憲報刊登有關該項除名的公告，而當憲報刊登該公告時，有關公司即告解散：

但該公司的每名董事、高級人員及成員的法律責任(如有的話)仍然持續並可強制執行，猶如該公司未曾解散一樣。

(3) 上述的公告副本須送交該公司，並可以轉遞方式送往或由專人交付該公司的註冊辦事處(註明該公司為收件人)，如該公司並無已註冊的辦事處，則可註明交山該公司的某名董事或高級人員轉交該公司。如處長並不知道該公司的任何董事或高級人員的姓名或名稱及地址，則該份公告可按組織章程大綱內所述的地址，送交或交付每名在章程大綱內簽署認購股份的人並註明由該人收件；如章程大綱並無此等地址，或如處長基於任何其他理由而認為任何依據本款發送的公告均相當可能不會為收件人知道，則只要按照第(2)款在憲報刊登該公告，即為充分遵從本款的規定。

**360D. 某些條文並不適用**

第 290、291(7) 及 292 條不適用於根據第 360C 條自登記冊中剔除的公司。

### 360E. Vesting and disposal of property of company struck off

(1) Where a company is struck off the register and dissolved under section 360C, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property but not including property held by the company on trust for any other person) shall vest in the Official Receiver.

(2) The Official Receiver shall with all due dispatch wind up the affairs of the company, and after realizing the said property and rights shall apply the sum so realized—

First, in paying all fees, costs, charges and expenses properly incurred in preserving, realizing or getting in the said property and rights.

Next, in paying all necessary fees, costs, charges and expenses incurred by the Official Receiver in and upon the winding up of the affairs of the company.

Next, in paying to the Government a sum equal to the fees which the Official Receiver could lawfully have charged if he had acted as liquidator of the company in a winding up thereof by the court.

Next, in paying the creditors of the company who shall have proved their debts within such time as shall have been limited by him not being less than 1 month from the date of publication of notice thereof in the Gazette and 2 or more local newspapers of which at least 1 shall be a Chinese newspaper, according to their respective rankings and priorities as if the company had been a company being wound up by the court by virtue of a winding up order dated the day of its dissolution under section 360C.

Next, in paying or distributing the surplus to or among the persons entitled thereto under the company's memorandum and articles of association.

### 360F. Provisions applicable to winding up of company struck off under section 360C

The provisions contained in sections 360G to 360M shall apply to the winding up by the Official Receiver of the affairs of a company struck off the register of companies under section 360C.

### 360G. Certain sections to apply

Sections 170 to 175, 190, 211, 221, 263 to 277, 281 to 283 and 285 shall apply *mutatis mutandis* as if on the day of the dissolution of the company under section 360C an order had been made for the winding up of the company by the court and as if the Official Receiver were the liquidator thereof.

### 360E. 被剔除公司的財產的歸屬及處置

(1) 凡公司根據第 360C 條自登記冊中被剔除及予以解散，在緊接其解散前歸屬公司或以信託形式代公司持有的所有財產及權利(包括批租土地財產，但不包括公司以信託形式代任何其他人士持有的財產)，均須歸屬破產管理署署長。

(2) 破產管理署署長須盡速將該公司的財務結束，並且在將上述財產及權利變現後，須將如此變現的款項運用於——

第一，支付在保存、變現或取得上述財產及權利時所適當地招致的一切費用。其次，支付破產管理署署長因結束該公司的事務並在結束該公司的事務時所招致的一切所需的費用。

再其次，向政府繳付一筆款項，數額相等於破產管理署署長假若向法院將該公司清盤時曾充當該公司清盤人本可合法地收取的費用。

再其次，按照該公司的債權人各自的順序攤還次序及優先權向該等債權人償付債項，但該等債權人須於破產管理署署長所限定的時間內(不少於由有關此事的公告在憲報及兩份或多於兩份本地報章(其中最少一份為中文報章)內刊登之日起計 1 個月)證明其債權，猶如該公司曾屬一間由法院憑藉一項在該公司根據第 360C 條解散之日作出的清盤令進行清盤的公司一樣。

再其次，將盈餘支付予或派發予根據該公司的組織章程大綱及章程細則有權獲支付或派發該項盈餘的人。

### 360F. 適用於根據第 360C 條被剔除公司的清盤的條文

第 360G 至 360M 條所載的條文，適用於破產管理署署長結束任何根據第 360C 條自公司登記冊中被剔除的公司的財務。

### 360G. 某些條文適用

第 170 至 175、190、211、221、263 至 277、281 至 283 及 285 條在加以必要的變通後即告適用，猶如在公司根據第 360C 條解散之日，法院曾作出一項有關該公司由法院清盤的清盤令一樣，而且猶如破產管理署署長是該公司的情盤人一樣。

**360H. Calls on contributories**

The Official Receiver shall have the same rights and powers to settle a list of the contributories of the company, to make and enforce calls on the contributories on the list so settled, and to compromise calls and liabilities to calls, as if the company were being wound up by the court and he were the liquidator thereof.

**360I. Continuation of pending legal proceedings**

Where any legal proceeding instituted by or against a company is pending at the date of its dissolution, such proceeding may be continued by or against the Official Receiver as representing such company.

**360J. Obstruction of Official Receiver**

Every person who—

- (a) without lawful excuse refuses to hand over to the Official Receiver or any person authorized by him in that behalf any key, safe, document, account book, or other thing of any nature whatsoever belonging to the company of which he may have the custody or possession; or
- (b) without lawful excuse in any way obstructs the Official Receiver or any person authorized by him in that behalf in taking possession of any premises occupied by the company prior to its dissolution,

shall be guilty of an offence and shall be liable on conviction to a fine and imprisonment. (*Amended 7 of 1990 s. 2*)

**360K. Control of Official Receiver**

- (1) Subject to the provisions of this Part, the Official Receiver shall conform to any directions which may be given to him by the Chief Executive for the purposes of this Part. (*Amended 23 of 1999 s. 3*)
- (2) The Official Receiver shall with the permission of the Chief Executive be entitled to apply by originating summons to the court for directions on any matter arising out of the winding up. (*Amended 23 of 1999 s. 3*)
- (3) Any such application shall be heard and determined in such manner as the court may direct, and it shall be lawful for the court to hear such parties and persons as it may think fit.
- (4) Without prejudice to the generality of subsection (3) the court may if it sees fit direct that the proceedings or any part thereof be heard in camera.

**360H. 向分擔人催繳股款**

破產管理署署長有權議定一份公司的分擔人列表，有權向該份如此議定的列表上所列的分擔人催繳股款並加以強制執行，以及有權對催繳股款及催繳股款的法律責任作出妥協，猶如有關公司正由法院清盤以及破產管理署署長是其清盤人一樣。

**360I. 待決的法律程序的延續**

如某公司所提起的法律程序或他人所提起針對某公司的法律程序在該公司解散之日待決，該項法律程序可由破產管理署署長代表該公司繼續進行，或可由他人繼續進行該項針對代表該公司的破產管理署署長的法律程序。

**360J. 對破產管理署署長的妨礙**

任何人——

- (a) 如在沒有合法辯解的情況下，拒絕將任何屬於公司而其本人可有權保管或管有的鑰匙、保險箱、文件、帳簿或其他任何性質的物件，移交破產管理署署長或就此授權的人；或
- (b) 如在沒有合法辯解的情況下，以任何方式妨礙破產管理署署長或就此授權的人取得管有該公司在解散前所佔用的處所，

即屬犯罪，一經定罪，可處罰款及監禁。 (*由 1990 年第 7 號第 2 條修訂*)

**360K. 對破產管理署署長的控制**

- (1) 除本部的條文另有規定外，破產管理署署長須依從從行政長官為施行本部而向其發出的任何指示。 (*由 1999 年第 23 號第 3 條修訂*)
- (2) 破產管理署署長如獲行政長官許可，即有權就清盤中產生的事宜，藉原訴傳票向法院申請發出指示。 (*由 1999 年第 23 號第 3 條修訂*)
- (3) 任何此等申請均須以法院所指示的方式審理及裁定，而法院可聆聽其認為合適的人士或各方的陳詞。
- (4) 在不損害第(3)款的概括性的原則下，法院如認為適合，可指示以非公開形式聆訊有關法律程序或其任何部分。

(5) If any person is aggrieved by any act or decision of the Official Receiver, that person may apply by originating summons to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

### 360L. Audit of Official Receiver's accounts

- (1) The accounts of the Official Receiver with respect to the winding up shall be audited in such manner as the Chief Executive may direct, and the cost of such audit shall be charged as an expense of the winding up. (*Amended 23 of 1999 s. 3*)
- (2) In the event of the accounts being audited by a public servant there shall be paid to the Government in respect of such audit a sum equal to the fee which would have been chargeable on the audit of the Official Receiver's accounts if the winding up had been a winding up by the court.

### 360M. Protection of Official Receiver

- (1) The Official Receiver shall not incur any personal liability in respect of the winding up of any company under this Part.
- (2) No legal proceeding of any kind whatsoever, civil or criminal, shall without the permission of the Chief Executive be brought against the Official Receiver in respect of any act or omission connected in any manner whatsoever with any winding up under this Part. (*Amended 23 of 1999 s. 3*)

### 360N. Companies to which Part XI applies

If the Chief Executive in Council is satisfied that a company to which Part XI applies would, if it were a society in respect of which the Societies Ordinance (Cap. 151) applied, be liable to have— (*Amended 23 of 1999 s. 3*)

- (a) its registration or exemption from registration cancelled under section 5D of the Societies Ordinance (Cap. 151); or
- (b) its operation or continued operation prohibited by the Secretary for Security under section 8 of that Societies Ordinance (Cap. 151),

the Chief Executive in Council may order the company to cease to carry on business within Hong Kong, and such company shall thereupon cease to carry on business within Hong Kong and in the case of paragraph (b), the company is deemed to be an unlawful society within the meaning of and for the purposes of the Societies Ordinance (Cap. 151); (*Amended 75 of 1992 s. 35; 118 of 1997 s. 20; 23 of 1999 s. 3*)

(5) 任何人如因破產管理署署長的任何作為或決定而感到受屈，可藉原訴傳票向法院提出申請，而法院可確認、推翻或修改所投訴的作為或決定，並可在此方面作出其認為公正的命令。

### 360L. 破產管理署署長帳目的審計

- (1) 破產管理署署長關於清盤的帳目，須按行政長官指示的方式予以審計，而審計費用須列為清盤的一項支出。 (*由 1999 年第 23 號第 3 條修訂*)
- (2) 如帳目由一名公務員審計，則須就上述審計向政府支付一筆款項，數額等於清盤假若是一宗由法院作出的清盤本會就審計破產管理署署長的帳目所徵收的費用。

### 360M. 對破產管理署署長的保障

- (1) 破產管理署署長無須就根據本部進行的任何公司清盤，招致任何個人法律責任。
- (2) 未經行政長官許可，不得就任何與根據本部進行的清盤在任何方式上有關連的作為或不作為，針對破產管理署署長提出任何性質的民事或刑事法律程序。 (*由 1999 年第 23 號第 3 條修訂*)

### 360N. 第 XI 部適用的公司

如行政長官會同行政會議信納，第 XI 部所適用的公司假若是《社團條例》(第 151 章)所適用的社團—— (*由 1999 年第 23 號第 3 條修訂*)

- (a) 其註冊或註冊豁免本可根據《社團條例》(第 151 章)第 5D 條取消者；或
- (b) 保安局局長本可根據《社團條例》(第 151 章)第 8 條禁止其運作或繼續運作者，

則行政長官會同行政會議可命令有關公司停止在香港內經營業務，而該公司須隨即停止在香港內經營業務；如該公司屬 (b) 段所指的公司，則並須當作為《社團條例》(第 151 章)所指的非法社團，而且就該條例而言，該公司須當作為非法社團； (*由 1992 年第 75 號第 35 條修訂；由 1997 年第 118 號第 20 條修訂；由 1999 年第 23 號第 3 條修訂*)

Provided that a person shall not be liable to prosecution for an offence against the Societies Ordinance (Cap. 151) by reason only that he is a member of a company which has been ordered to cease to carry on business under this section.

(Part XIII A added 6 of 1984 s. 251)

#### PART XIV

##### SAVINGS

### 361. Saving

(1) Without prejudice to the provisions of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) —

(a) nothing in the repeal of the Companies Ordinance 1911 (58 of 1911), shall affect any order in council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued or thing done under any former enactment relating to companies, but any such order in council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Ordinance, continue in force, and so far as it could have been made, passed, given, taken, issued or done under this Ordinance shall have effect as if made, passed, given, taken, issued or done under this Ordinance;

(b) any person appointed to any office under or by virtue of any former enactment relating to companies shall be deemed to have been appointed to that office under or by virtue of this Ordinance;

(c) any register kept under any former enactment relating to companies shall be deemed part of the register to be kept under the corresponding provisions of this Ordinance;

(d) all funds and accounts constituted under this Ordinance shall be deemed to be in continuation of the corresponding funds and accounts constituted under the former enactments relating to companies.

(2) In this section, "former enactment relating to companies" (與公司有關的前行成文法例) means the Companies Ordinance 1911 (58 of 1911), and any enactment repealed thereby.

但任何人不得僅因身為一間已根據本條被命令停業的公司的成員，而被檢控《社團條例》(第 151 章)所訂的罪行。

(第 XIII A 部由 1984 年第 6 號第 251 條增補)

#### 第 XIV 部

##### 保留條文

### 361. 保留條文

(1) 在不損害《釋義及通則條例》(第 1 章)第 23 條的條文下——

(a) 《1911 年公司條例》\* (1911 年第 58 號)的廢除，並不影響根據任何與公司有關的前行成文法例而作出的樞密院頒令、命令、訂立的規例、規例、費用表、作出的委任、訂立的轉易契、按揭、契據或協議、通過的決議、發出的指示、採取的法律程序、發出的文書或做出的事情，但任何此等樞密院頒令、命令、規則、規例、費用表、委任、轉易契、按揭、契據、協議、決議、指示、法律程序、文書或命令、命令、規例、規例、效時有效，則持續有效，而任何此等樞密院頒令、命令、規例、規例、費用表、委任、轉易契、按揭、契據、協議、決議、指示、法律程序、文書或事情，只要有可能根據本條例作出、訂立、通過、採取、發出或做出，即具有效力，猶如是根據本條例作出、訂立、通過、採取、發出或做出一樣；

(b) 任何人根據或憑藉任何與公司有關的前行成文法例獲委任任何職位，須當作已根據或憑藉本條例獲委任該職位；

(c) 根據任何與公司有關的前行成文法例則備存的任何登記冊，須當作是根據本條例的相應條文備存的登記冊的一部分；

(d) 所有根據本條例成立的基金及帳目，均須當作是根據與公司有關的前行成文法例成立的相應基金及帳目的延續。

(2) 在本條中，“與公司有關的前行成文法例” (former enactment relating to companies) 指《1911 年公司條例》\* (1911 年第 58 號)及由該條例廢除的任何成文法例。

\* “《1911 年公司條例》”乃“Companies Ordinance 1911”之譯名。