

Excerpts of Taiwanese Company Law

(Promulgated on December 26, 1929 and latest amended on November 12, 2001)

CHAPTER V COMPANY LIMITED BY SHARES

SECTION 4. DIRECTORS AND BOARD OF DIRECTORS

Article 211

- I. In case the loss incurred by a company aggregates to one half of its paid-in capital, the board of directors shall convene and make a report to a meeting of shareholders.
- II. Subject to the provisions set out in **Article 282 of this Law**, in case the assets of a company is insufficient to set off its liabilities, the board of directors shall apply to the court for pronouncement of its **bankruptcy**.
- III. The director(s) authorized to represent the company who has (have) violated the provisions of the preceding two Paragraphs shall be imposed with a fine of not less than NT\$ 20,000 but not more than NT\$ 100,000.

SECTION 10. **REORGANIZATION OF A COMPANY**

Article 282

- I. Where a company which publicly issues shares or corporate bonds suspends its business due to financial difficulty or there is an apprehension of suspension of business thereof, but there is a possibility for the company to be constructed or rehabilitated, the company or any of the following interested parties may apply to the court for reorganization:
 1. Shareholders who have been continuously holding shares representing ten per cent or more of the total number of issued shares for a period of six months or longer; or
 2. Creditors of the company who have claims equivalent to ten per cent or more of the capital from the total number of issued shares.
- II. For filing the reorganization application by a company under the preceding Paragraph, the Board of Directors of the company shall adopt a resolution by a majority vote of the directors present at a meeting of the Board of Directors attended by over two-thirds of all directors.

Article 283

- I. The application for reorganization of a company shall be filed to the court in writing in five copies by the applicant(s) and shall state

therein the following particulars:

- 1.The name and domicile or residence of the applicant and a statement on the status of the petitioner as such; in case the applicant is a juristic person, or an organization or agency, the title, the business place of office of the applicant;
 - 2.The name or title and the location of the statutory representative or the agent, if any, and the relationship between the statutory representative and the applicant;
 - 3.The name, location, office, business place, and the name, domicile or residence of the responsible person representing the company;
 - 4.The cause and the fact of the application;
 - 5.The business undertaken by the company and the condition of such business;
 - 6.The reports, financial statements, records and books prepared by the company for the most recent year in accordance with the provisions set out in Article 282 hereof. If the application date falls beyond the sixth month after commencement of a year, a separate semi-annual balance sheet for the first half of the current year shall also be submitted; and
 - 7.Opinions on the reorganization of the company.
- II.The matters as required in Items 5 through7 of the preceding Paragraph may be supplemented by attachments.
- III.In case the application is filed by the company, a substantial reorganization proposal shall be submitted.
- IV.In case the application is filed by shareholders or creditors, the documents identifying the qualification of the applicants shall be filed along with the application, but particulars as required in Items 5 and 6 of Paragraph I under this Article need not be stated.

Article 283-1

Under any of the following circumstances, an application for reorganization shall be dismissed by the court:

- 1.Where the application is not file in accordance with the proper procedure provided, however, that if the improper filing procedure can be rectified, the applicant shall be ordered to take corrective action;
- 2.Where the company has not made public issuance of shares or corporate bonds;
- 3.Where the company has been adjudicated bankrupt by a final ruling;
- 4.Where the settlement resolution made by the company in accordance with

this Law has become final;

5. Where the company has been dissolved; or

6. Where the company has been ordered to wind up and to liquidate within a given time limit.

Article 284

I. Subject to the dismissal of the application as provided for in the preceding Article, the court shall, when it receives an application for reorganization, forthwith send copies of such application to the competent authority, the central authority in charge of end-enterprise concerned, and the authority in charge of securities affairs, and shall solicit their substantial opinions as to whether the reorganization shall be effected or not..

II. The court may also solicit the opinions on the proposed reorganization from the taxation authority and other relevant authorities at the locality of the company.

III. The authorities whose opinions are solicited by the court in accordance with the provisions of the preceding Paragraph shall give their opinions within 30 days.

IV. In case the applicants are shareholders or creditors of a company, the court shall send a notice with a copy of the application to the company.

Article 285

I. In addition to the requests for opinions as provided in Paragraph 1 of the preceding article, the court may also select and appoint a person with specialized knowledge or experience in the operation of the business of the company but without any interest therein as the inspector who shall, within thirty days after appointment, complete the following examinations and submit a report accordingly:

1. The actual business, financial condition, and evaluation of the assets of the company;

2. To examine in the light of the analysis of the business and financial conditions, the assets and production equipment of the company to see whether the reconstruction or rehabilitation of the company is possible or not;

3. To examine the merits and demerits of the previous business operation of the company and the records of management of the operation by the responsible person of the company to see whether there was any neglect or improper practices;

4. To examine whether there is any fraudulent or false statement in the application;
 5. To examine the feasibility of the reorganization proposal, if the applicant is the company; and
 6. To examine other relevant reorganization proposals.
- II. The inspector may inspect all books, records of accounts, documents and property relating to the business or finance of the company. The directors, supervisors, managerial personnel, or other staff personnel shall have the obligation to answer the enquiries made by the inspector regarding the operation and financial activities.
- III. Directors, supervisors, managerial officers and other employees of the company who refuse the aforesaid examination or refuse to answer the aforesaid questions without reason or make false statements shall be severally subject to a fine not less than NT\$ 20,000 but not more than NT\$ 1000,000.

Article 285-1

- I. Based on the report made by the inspector and by making reference to the opinions provided by the central authority in charge of the end enterprise concerned, the authority in charge of securities affairs, the central authority in charge of financial affairs, and other relevant authorities and organizations, the court shall, within 120 days after its receipt of a reorganization application filed by a company, render a ruling to approve or to dismiss the said re-organization application and shall notify all authorities concerned of such ruling accordingly.
- II. The 120-day reviewing period fixed in the preceding Paragraph may be extended by a ruling to be made by the court for an additional 30 days provided that no more than two extensions may be made.
- III. Under either of the following circumstances, the court may dismiss a company re-organization application:
1. Where any statement or information contained in the written application documents is found false or untrue; or
 2. Where reconstruction and/or rehabilitation as proposed by the applicant is deemed unfeasible after considering the business and financial conditions of the company.
- IV. When dismissing a company reorganization application by a ruling to be rendered in accordance with the provisions set out in the preceding Paragraph, the court may, *ex officio*, make a bankruptcy pronouncement,

if the conditions for bankruptcy are met.

Article 286

Prior to a ruling for reorganizers of a company, the court may order responsible persons of the company to prepare and submit lists of creditors and shareholders of the company within seven days according to the nature of their rights respectively, stating therein also their domiciles or residences and the total amount of credits or the total amount of money in shares.

Article 287

- I. Prior to rendition of a ruling for reorganization of a company, the court may, at the request of the company or an interested party or ex officio, render a ruling for the following disposal:
 1. Disposal for preservation of the company's property;
 2. Restriction on the business of the company;
 3. Restriction on performance of obligation of the company and exercise of claim against the company;
 4. Suspension of proceedings for bankruptcy, composition, or compulsory execution and others;
 5. Prohibition of transfer of registered share certificates; and
 6. Assessment of the liabilities of responsible persons of the company to compensate the company for loss or damage and preservation of their property.
- II. The term of validity of the ruling to be made under the preceding Paragraph shall not exceed 90 days, unless otherwise fixed by the court; and may be extended when necessary by the court at the request of the company or an interest party provided that the duration of each extension shall not exceed 90 days.
- III. In case the ruling for dismissing a company reorganization application becomes final prior to the expiry of the term of validity referred to in the preceding Paragraph, then the ruling rendered under Paragraph I under this Article shall become null and void.
- IV. In rendering a ruling under the provisions of Paragraph I of this Article, the court shall inform, by a notice, the authority in charge of securities affairs and the central authority in charge of the relevant end enterprise.

Article 288

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Article 289

- I. At the time of ruling for reorganizers, the court shall select and appoint a person with specialized knowledge and experience in the operation of the business of such company or a banking institution as reorganizers supervisor and decide on the following matters:
 1. The period and place for declaring rights of creditors and shareholders, and the period shall not be less than ten days nor more than thirty days from the date of ruling;
 2. The date and place to examine rights of creditors and shareholders thus declared, and the date shall be within ten days of the date of expiration of the aforesaid period for declaration; and
 3. The date and place of the first meeting of parties concerned, and the date shall be within 30 days of the date after expiration of the period for declaration mentioned in Item 1.
- II. The aforesaid reorganization supervisor shall act under the supervision of the court and may be discharged by the court at any time.

Article 290

- I. The reorganizers of the company shall be selected and appointed by the court from among the relevant experts recommended by creditors, shareholders, directors, the central authority in charge of the relevant end enterprise, and/or the authority in charge of securities affairs.
- II. In the meeting of interested parties, if the result of the voting conducted in groups under Article 302 shows that two or more groups prefer a change of reorganizers, a list of candidates may be submitted to the court along with an application for such change.
- III. In case there is a plural number of reorganizers, execution of all matters relating to reorganization shall be effected by a majority vote of them.
- IV. In the execution of duties, the reorganizers shall secure the prior consent of the reorganization supervisor:
 1. Disposal of property of the company outside the scope of its business;
 2. Change of the business of the company or in the ways of operation;
 3. Contract of loans;
 4. Conclusion or rescission of important or long term contracts, the scope of which shall be determined by the reorganizers supervisor;
 5. Proceeding in litigation or arbitration;

6. Waiver or assignment of rights of the company;
7. Dealing in cases where others exercise rights of retrieval, rescission or set-off;
8. Appointment and removal of important officers of the company; and
9. Other acts restricted by the court.

Article 291

- I. After rendering a ruling of company reorganization, the court shall publish the following particulars by means of a public notice:
 1. The text and the date of the ruling of company reorganization;
 2. The name or title and the domicile or address of the reorganization supervisor and the reorganizers;
 3. The period, date and place as fixed in accordance with the provisions of Paragraph I, Article 289 hereof; and
 4. The legal consequences which may result from the negligence of the creditors and shareholders of bearer share certificates of the company to declare their claims and rights.
- II. The court shall still be obligated to serve notice in writing of the ruling and the particulars contained therein to the reorganization supervisor, the reorganizers, the company and the creditors and the known shareholders.
- III. At the time the court sends the aforesaid notice of ruling to the company, the court shall send a court clerk to write down in the accounting books the account-closing decision, to affix thereon his signature or seal, and to write down a brief statement describing the condition of such accounting books.

Article 292

The court shall, after rendering ruling for reorganizers, notify the authority with a copy of such ruling for registration of the institution of reorganizers.

Article 293

- I. After delivery of the ruling for reorganization of the company, the operation of the business of the company and the power of controlling and disposing of the property thereof shall be transferred to reorganizers, and the reorganization supervisor shall supervise such transfer, which shall then be reported to the court.
- II. Upon such transfer, the shareholders' meeting, directors and supervisors shall cease to perform their duties and to exercise their powers. At the time of the aforesaid transfer, the directors and

managerial officers of the company shall hand over to the reorganizers all statements and records of accounts and documents relating to the business and finance of the company and all property thereof.

- III. Directors, supervisors, managerial officers or other members of the staff of the company, for any of the following acts, shall be severally subject to imprisonment for a period not exceeding one year, detention and/or a fine not exceeding NT\$60,000:
1. Refusal to transfer;
 2. Concealment, destruction or damage of statements, records of accounts or documents relating to the business or financial condition of the company;
 3. Concealment, destruction, or removal of property of the company, or the disposal of such property a manner prejudicial to creditors;
 4. Refusal to answer questions mentioned in the aforesaid paragraph without reason; and
 5. Fabrication of debts or acknowledgement of untrue debts.

Article 294

After a ruling for reorganizers is rendered, all procedures of bankruptcy, composition, compulsory execution and other litigation involving property shall be suspended in due course.

Article 295

The disposition made by the court in accordance with the provisions of Article 287, Paragraph 1, Items 1, 2, 5 and 6 shall remain in effect regardless of the ruling for reorganizers, and in the absence of such disposition, the court may still render such rulings on the application of an interested party or the reorganizers supervisor or ex officio after having rendered the ruling for reorganizers.

Article 296

- I. All right of creditors of the company established prior to the ruling for reorganizers shall be rights of creditors in reorganizers; all rights with preference for repayment according to law shall be preferred rights of creditors in reorganizers; all rights secured by mortgages, pledges or rights of retention shall be secured rights of creditors in reorganizers; and all right without such security shall be rights of creditors without security. All such rights of creditors shall not be exercised unless in a accordance with reorganizers procedures.
- II. The provisions of the Bankruptcy Law relating to the rights of

creditors in bankruptcy, with the exception of provisions governing right of discriminative, and preferential rights shall apply mutatis mutandis to the aforesaid rights of creditors.

III. Rights of retrieval, rescission or set off shall be exercised against the reorganizers.

Article 297

I. All creditors in reorganizers shall produce documents to sufficiently prove the existence of their rights for declaring their rights to the reorganizers supervisor and, if so declared, the prescription is interrupted and, if not declared, no repayment shall be made according to the reorganizers procedures.

II. Rights of registered shareholders of the company shall be based on records in the shareholders' roster. The provision of the receding paragraph governing declaration shall apply mutatis mutandis to rights of unregistered shareholders and, if not declared, no such right shall be exercised according to the procedures of reorganizers.

III. In case of failure to declare as provided in the two preceding paragraphs for causes not attributable to the persons of whom declaration is required, such persons may make good the declaration within fifteen days after extinction of the cause; however, no declaration shall be accepted after the reorganizers plan has been adopted at a meeting of the concerned parties.

Article 298

I. The reorganizers supervisor shall, after the expiration of the period for declaring rights, in accordance with findings in the preliminary examination, prepare lists of preferred creditors in reorganizers secured creditors in organizers, unsecured creditors in reorganizers and shareholders respectively, stating therein the nature of their rights, sums of money and number of votes, and shall submit a report to the court, keep all of the above at a suitable place, and publicly announce the date and place of such keeping so that the creditors in reorganizers, shareholders and other interested persons may inspect, all to be done three days before the date mentioned in Article 289, Paragraph 1, Item 2.

II. The number of votes of creditors in reorganizers shall be determined in proportion to the amounts of money involved in their credits. The number of votes of shareholders shall be that provided in the articles of incorporation.

Article 299

- I. In the court's session of hearing rights of creditors in reorganizers and rights of shareholders, the reorganizers supervisor, reorganizers, and responsible persons of the company shall be present to answer inquiries, and the creditors in organizers, shareholders and other interested persons may be present to express their opinions.
- II. In the event of any objection to the right of creditor or the right of shareholder, the court shall render a ruling on such right.
- III. Any interested person who substantially contests the right of creditor or the right of shareholder shall institute an action for determination within twenty days after the service of the ruling referred to in the preceding paragraph, and prove to the ruling court that such action has been instituted. After instituting such action and before a judgment thereto becomes irrevocable, the right concerned shall be exercised according to the contents of, and in the amount allowed by the ruling referred to in the preceding paragraph; however, in receiving the repayment in accordance with the plan of reorganizers, the amount received shall be deposited with a court.
- IV. A right of creditor or a right of shareholder shall be deemed final and shall have the same effect as an irrevocable judgment against the company and all the shareholders and creditors of the company if prior to the end of hearing in court no objection was raised against such right.

Article 300

- I. All creditors in reorganization and shareholders shall be concerned persons in the reorganization of the company and shall attend meetings of concerned persons. They may appoint a proxy to attend such meetings if they are unable to do so in person for any cause.
- II. The reorganization supervisor shall be the chairman of all meetings of concerned persons and shall convene all such meetings with the exception of the first meeting.
- III. The reorganization supervisor, in calling meetings as provided in the aforesaid paragraph, shall serve notice and public announcement five days prior to the meeting, stating therein the purpose of the meeting. In the event that no conclusion can be reached at one meeting, and announcement to adjourn or postpone the meeting is made on the spot by the reorganization supervisor, then no service of notice or public announcement is required.

IV. At the meeting of concerned persons, the reorganizers and responsible persons of the company shall be present to answer inquiries.

V. Responsible persons of the company who refuse to answer inquiries as aforesaid without reason or make false statement in their replies shall be severally subject to imprisonment for a period not exceeding one year, detention and/or a fine not exceeding NT\$60,000.

Article 301

The functions of the meeting of concerned persons are as follows:

1. To hear reports on business and financial conditions of the company and opinions on reorganizers of the company;
2. To deliberate and vote on the reorganizers plan; and
3. To resolve other matters relating to reorganizers.

Article 302

I. At the meeting of concerned persons, the voting right shall be exercised in groups of claimants as provided in Article 298, Paragraph 1, and resolutions shall be adopted by a majority vote of over one-half of the aggregate votes of different groups; however, decision on the reorganizers plan shall be made by a majority of over two-thirds of the aggregate votes of different groups.

II. In the event that there is no net value of capital of the company, the shareholders group shall not exercise voting right.

Article 303

I. The reorganizers shall draw up a plan or reorganizers and submit same together with reports and statements of business and finance of the company to the first meeting of concerned persons for examination.

II. In the event of a change of reorganizers as provided in Article 290, the reorganizers plan shall be submitted by newly appointed reorganizers within one month.

Article 304

I. The following particulars, if any, in the reorganizers of a company, shall be stated clearly in the reorganizers plan:

1. Changes in rights of any or all creditors in reorganizers or shareholders;
2. Changes in part or all of the business;
3. Disposal of property;

4. Ways and means of paying debts and the financial source thereof;
 5. Standards and methods of valuation of assets of the company;
 6. Alteration of the Articles of Incorporation of the company;
 7. Readjustment or reduction of employees;
 8. Issue of new shares or corporate bonds; and
 9. Other necessary matters.
- II. Subject to the deadline date for discharge of all liabilities otherwise fixed, the duration for execution of the company reorganization plan shall not exceed one year as calculated from the date on which the court ruling of approval of the reorganization plan becomes final. In case the reorganization plan can not be completed as scheduled with good cause shown, an application for extension may be filed, with prior consent of the reorganization supervisors, with the court for a court ruling of extension provided, however, that if the reorganization plan is still not completed upon expiry of the extended period, then the court may, ex officio or at the petition of interested party or parties, render a ruling of termination of the company reorganization plan.

Article 305

- I. In case the reorganization plan is adopted at the meeting of interested parties, the reorganizers shall apply to the court for a ruling of approval and thereupon execute it, and shall also report such court ruling of approval to the competent authority for its record.
- II. The company reorganization plan approved by the court shall bind on the company and the interested parties, and if the obligation to perform as specified in such plan can be set up as the object of compulsory execution, the reorganization plan may be subject to compulsory executed accordingly.

Article 306

- I. In case the plan of reorganizers is not adopted by the groups with voting right at the meeting of persons concerned, the reorganizers supervisor shall forthwith report to the court and the court may direct modification or alteration on fair and reasonable principle and order the meeting of persons concerned to reconsider the plan reorganizers within one month. In case the aforesaid plan of reorganizers remains not adopted upon reconsideration at the meeting of persons concerned,

the court shall render a ruling to terminate the reorganizers; however, if the company is really worthy of reorganizers the court may, as against the dissenting group, amend the plan of reorganizers in any one of the following ways and render a ruling to approve it:

1. That the property held as security by secured creditors in reorganizers together with the right of claim is to be transferred to the company after reorganizers, and such right is to remain in existence without any change;
 2. That the property held as security by secured creditors in reorganizers, the property that can be appropriated to meet repayments to unsecured creditors in reorganizers and the residual property that can be distributed to shareholders may, on the basis of its price if fair deals and in proportion to the sharing parts to which such creditors and shareholders are entitled, be disposed of for repayment, distributed to those entitled to receive it, or deposited with a court; or
 3. Other fair and reasonable ways beneficial to maintaining the business of the company and protecting the right creditors.
- II. In case the plan of reorganizers mentioned in the first paragraph of the preceding article or in the preceding paragraph cannot or need not be executed on account of change in circumstances or for a good cause, the court may, on application of the reorganizers supervisor, reorganizers, or persons concerned, render a ruling to order the meeting of persons concerned to reconsider. In case there is obviously no possibility of or necessity for reorganizers, the court may render a ruling for termination of reorganizers.
- III. The aforesaid plan of reorganizers adopted on reconsideration shall be submitted in an application to the court for a ruling of approval.

Article 307

- I. In taking the measures as set forth in the two preceding Articles, the court shall seek the opinions of the central competent authority, the central authority in charge of the relevant end enterprise, and also the authority-in-charge of securities affairs.
- II. Where the court renders a ruling for termination of reorganization, it shall notify the competent authority and provide it with a copy of such ruling; and the competent authority shall, when the said court ruling becomes final, forthwith make a registration of termination

of the reorganization plan, and if the conditions for bankruptcy are met, the court may, ex officio, render a ruling to pronounce the company bankrupt.

Article 308

Except when the provisions of the Bankruptcy Law shall govern in the case that a court has ex officio, rendered a judgment to adjudge a company bankrupt, a ruling for termination of reorganizers rendered by a court shall have the following effects:

1. Any disposition or effect thereof under Article 287, Article 294, Article 295 or Article 296 shall be null and void;
2. A person who has been barred from exercising his right for neglect in declaring the right shall have such right restored; and
3. The shareholders' meeting, directors and supervisors whose powers and functions have been suspended on account of reorganizers shall have such powers and functions restored forthwith.

Article 309

During the process of reorganization of a company, if any of the following provisions conflict with the fact, the court may, at the request of the reorganizers, render a ruling of other appropriate disposition:

1. The provisions of Article 277 governing amendment or alteration of the articles of incorporation;
2. The provisions of Article 278 governing increase of capital;
3. The provisions of Article 279 and 281 governing the period of time for serving notice and making public announcement of and restrictions on the reduction of capital;
4. The provisions of Article 268 to 270 and Article 276 governing issue of new shares;
5. The provisions of Article 248 to 250 governing issue of corporate bonds;
6. The provisions of Article 128, Article 133, Article 148 through 150, and Article 155 incorporation of companies; or
7. The provisions of Article 272 governing the categories of capital contribution.

Article 310

- I. Reorganizers of a company shall complete the reorganization plan within

the implementation schedule specified therein; and upon completion of the reorganization plan, shall apply to the court for a court ruling of recognition of the completion of the reorganization, and shall, after such court ruling became final, convene a meeting of shareholders for election of directors and supervisors.

II. After assuming their offices as directors and supervisors, the directors and supervisors shall, in conjunction with the reorganizers, file an application with the competent authority for registration or for company alteration registration.

Article 311

I. Upon completion, the reorganizers of a company shall have the following effects:

1. The rights of claims on the unpaid parts of obligatory rights already declared shall expire except such parts as assigned to and assumed by the company after reorganizers according to the plan of reorganizers; the same shall apply to obligatory right not declared;
2. The changed, decreased or cancelled part of the right of shareholders in consequence of the reorganizers shall expire; the same shall apply to the right of bearer share certificates not declared; and
3. Procedure of bankruptcy, composition, compulsory execution and other litigations involving property of the company prior to the ruling for reorganizers shall be ineffective.

II. The rights of creditors of a company against sureties and other common debtors of the obligations of the company shall not be affected by the reorganizers of the company.

Article 312

I. The following debts incurred during the reorganizers of the company shall have preference for repayment over the rights of creditors in reorganizers:

1. Debts incurred for continued operation of the business of the company; and
2. Expenses incurred in the process of reorganizers.

II. The aforesaid right of preference for repayment shall not be prejudiced on account of a ruling for termination of reorganizers.

Article 313

I. Inspectors, reorganization supervisors and reorganizers shall perform their duties with the care of good administrators. Their remuneration shall be determined by the court in consideration of the nature of their duties.

II. An inspector, reorganization supervisor or reorganizer who violates law or ordinance in the performance of his duties, thereby causing loss or damage to the company, shall compensate the company.

III. Inspectors, reorganization supervisors or reorganizers who make a false statement or record of their acts within the scope of duties shall be severally subject to imprisonment for a period not exceeding one year, detention and/or a fine not exceeding NT\$60,000.

Article 314

The provisions of the Code of Civil Procedure shall apply mutatis mutandis to jurisdiction, application, notification process service, public announcement, ruling interlocutory appeal, and other proceedings in this section.