

**《公司條例草案》委員會  
《公司條例草案》第 7 部 — 債權證  
委員會審議階段修正案**

下表載述政府當局就《公司條例草案》第 7 部(“債權證”)(第 303 至 330 條)擬議提出的委員會審議階段修正案(修正案)。政府當局在擬訂這些修正案時，考慮了議員、各團體／代表及立法會法律顧問的意見。這些修正案的標示文本按數序排列，載於**附件**以供參閱。在附件內的中文標示文本只載有僅適用於中文版的修正案。有關附表 10(“過渡性條文及保留條文”)的修正案，我們稍後會一次過向法案委員會匯報。

本列表所採用的縮寫如下：

《公司條例》：《公司條例》(第 32 章)  
法案委員會：《公司條例草案》委員會  
修正案：委員會審議階段修正案  
草案：《公司條例草案》  
處長：公司註冊處處長

| 項目               | 有關事宜／<br>條文              | 擬議的<br>委員會審議階段修正案                | 備註                                                                                                                                                                                                                                                                                                                       |
|------------------|--------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>草案各部的一般修訂</b> |                          |                                  |                                                                                                                                                                                                                                                                                                                          |
| 1                | 把向處長交付文件的“14 日”修訂為“15 日” | 如任何文件須在“14 日”內交付處長，時限應修訂為“15 日”。 | <ul style="list-style-type: none"> <li>• 有法案委員會委員關注，公司向處長交付某些文件作登記或通知之用，14 日的期限可能並不足夠，因為就一些文件而言，《公司條例》所訂的交付期限為 15 日。</li> <li>• 經審視後，政府當局同意把草案相關條文的 14 日期限劃一修訂為 15 日。請參閱立法會 CB(1)357/11-12(01)號文件“政府當局對委員在二零一一年十一月四日及十一日會議上提出有關第 4 及 5 部的事宜所作的回應”第 31 及 32 段。</li> <li>• 就第 7 部而言，我們建議據此修訂第 305(2)及(3)、309(2)</li> </ul> |

| 項目                | 有關事宜／<br>條文               | 擬議的<br>委員會審議階段修正案                                                                                                                                                                                                                                                                                                                       | 備註                                                                                                                                                                                                                                       |
|-------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   |                           |                                                                                                                                                                                                                                                                                                                                         | 及(3)和 312(3)條。                                                                                                                                                                                                                           |
| <b>第 7 部的其他修訂</b> |                           |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                          |
| 2                 | 第 306 條<br>查閱及要求文<br>本的權利 | 刪除第 306(8)條。                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>這項修正案是因應委員在二零一一年十一月十一日的法案委員會會議上的意見而提出的。</li> <li>委員認為第 306(7)條已賦予原訟法庭廣泛的酌情權作出命令，故或無需要訂定第 306(8)條。</li> <li>請參閱立法會 CB(1)744/11-12(01)號文件“政府當局對委員在二零一一年十一月十一日會議上提出有關第 7 部的事宜所作的回應”第 9 段。</li> </ul> |
| 3                 | 第 310 條<br>備存登記支冊         | <p>(I) 在 第 310(1) 條 “...of debenture holders (in this section called <i>the principal register</i>)...”(... 債權證持有人登記冊(在本條中稱為 <b>登記主冊</b>)...) 修訂為 “...of debenture holders (<del>in this section called <i>the principal register</i></del>)...”(... 債權證持有人登記冊(在本條中稱為 <b>登記主冊</b>) ...)。</p> <p>(II) 修訂第 310(3)條，加入 15 日的時限，規定備存登記支</p> | <ul style="list-style-type: none"> <li>根據法律草擬科的草擬常規，不必就附加的定義加入“in this section called”(在本條中稱為)的字眼。</li> <li>這項修正案是因應委員在二零一一年十一月十一日的法案委員會會議上的意見而提出的。</li> </ul>                                                                           |

| 項目 | 有關事宜／<br>條文                | 擬議的<br>委員會審議階段修正案                                                                                                                             | 備註                                                                                                                                                                                                                                                      |
|----|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                            | <p>冊的公司須：</p> <p>(a) 在備存該公司的登記主冊所在的地方，安排備存登記支冊的複本；以及</p> <p>(b) 在該登記支冊作出記項後的 15 日內：</p> <p>(i) 將該記項的文本傳轉至其註冊辦事處；以及</p> <p>(ii) 更新登記支冊的複本。</p> | <ul style="list-style-type: none"> <li>第 310(6)條就公司違反第 310(3)條訂定罪行。委員認為第 310(3)條沒有就遵從規定訂明時限，有欠清晰。</li> <li>經審視後，我們同意引入時限，為登記支冊作出記項後的 15 日內。</li> <li>請參閱立法會 CB(1)744/11-12(01)號文件“政府當局對委員在二零一一年十一月十一日會議上提出有關第 7 部的事宜所作的回應”第 10 及 11 段。</li> </ul>       |
| 4  | 第 319 條<br>轉讓的證明           | 把第 319(1)(b)條“...或債權股證有所有權的陳述。”修訂為“...或債權股證 <u>具</u> 有所有權的陳述。”。                                                                               | <ul style="list-style-type: none"> <li>這項修正案是因應立法會法律顧問的建議而提出的，以改善行文。</li> </ul>                                                                                                                                                                         |
| 5  | 第 322 條<br>遺囑認證書批<br>給等的證據 | 把第 322 條“就債權證的轉讓或債權證的權利...”修訂為“就債權證的轉讓或 <u>獲得</u> 債權證的權利...”。                                                                                 | <ul style="list-style-type: none"> <li>這項修正案是因應類似條文的中文譯法而提出的，包括第 317(2)條“right to debentures”(獲得債權證的權利)及草案其他部份(如第 145 條)“right to shares”(獲得股份的權利)，以保持譯法的一致性。</li> <li>我們亦提出了修正案以修訂第 153(1)、155(2)及 156 條“right to shares”的中文譯法，由“股份的權利”或“股份</li> </ul> |

| 項目 | 有關事宜／<br>條文              | 擬議的<br>委員會審議階段修正案                                         | 備註                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----|--------------------------|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                          |                                                           | 權利”修訂為“ <u>獲得</u> 股份的權利”。                                                                                                                                                                                                                                                                                                                                                                                                               |
| 6  | 第 324 條<br>永久債權證         | 把第 324(1)條“...並不僅因該條件...”修訂為“...並不會 <u>僅</u> 因該條件...”。    | <ul style="list-style-type: none"> <li>這項修正案是因應立法會法律顧問就類似的條文(第 207(2)條)的意見而提出的，以避免不清晰之處。</li> </ul>                                                                                                                                                                                                                                                                                                                                     |
| 7  | 第 325 條<br>重新發行已贖回債權證的權力 | 加入新的第 325(5A)條、修訂第 325(6)條及刪去第 325(7)條，以重述《公司條例》第 77(5)條。 | <ul style="list-style-type: none"> <li>草案第 325(4)、(5)、(6)及(7)條旨在重述《公司條例》第 77(5)條。</li> <li>根據《公司條例》第 77(5)條，如以重新發行的債權證為保證而貸出款項的人在不知悉有關債權證並未妥為加蓋印花的情況下將債權證在執行訴訟中提出為證據，公司一般有責任繳付印花稅及罰款。</li> <li>草案第 325(7)條訂明，根據《印花稅條例》(第 117 章)就重新發行的債權證須繳付的印花稅及罰款，須由有關公司繳付。這項規定似乎超出了《公司條例》第 77(5)條的但書所述有關公司的法律責任範圍。</li> <li>為重述《公司條例》的規定，根據修正案，只有在有關人士將債權證在執行訴訟中提出為證據而且不知悉債權證並未加蓋印花或並非因疏忽而不知悉此事(草案第 325(6)條)的情況下，公司方有責任繳付印花稅(草案第 325(7)條)。</li> </ul> |
| 8  | 第 329 條<br>受託人對債權        | 把第 329(2)(b)(i)及(4)條“不少於”修訂為“最少”。                         | <ul style="list-style-type: none"> <li>這項修正案是因應立法會法律顧問的意見而提出的。法律顧問注意到“at least”在第 729(6)(c)條中譯作“最少”，但在第 729(6)(a)條中則譯作“不少於”。經審視後，</li> </ul>                                                                                                                                                                                                                                                                                            |

| 項目 | 有關事宜／<br>條文              | 擬議的<br>委員會審議階段修正案 | 備註                                                                                                                                                                                                                                                                                                                                                                                     |
|----|--------------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | 證持有人的法律責任                |                   | 我們同意在草案中，若情況合適，“at least”應譯作“最少”，以保持譯法的一致性。                                                                                                                                                                                                                                                                                                                                            |
| 9  | 第 330 條<br>債權證持有人的受託人的豁免 | 刪除第 330 條。        | <ul style="list-style-type: none"> <li>• 這項修正案是因應委員在二零一一年十一月十一日的法案委員會會議上的意見而提出的。</li> <li>• 委員問及為何受託人若按照在根據第 328 條召開的債權證持有人會議上給予的指示行事，便無須為其疏忽作為或不作為負上法律責任。</li> <li>• 經考慮委員的意見後，政府當局同意，若受託人在根據第 328 條召開的會議上如此行事，所須負的法律責任，應與按照債權證持有人在根據信託契據或債權證的條文召開的會議上行事時一樣。因此，第 330 條應予刪除。</li> <li>• 請參閱立法會 CB(1)744/11-12(01)號文件“政府當局對委員在二零一一年十一月十一日會議上提出有關第 7 部的事宜所作的回應”(第 21 至 23 段)。</li> </ul> |

### 其他相關事宜

就第 313 條(“配發申報書”)而言，立法會法律顧問建議，應把第 313(6)條“...而第(1)款在猶如提述一個月是提述該延長的限期的情況下具有效力。”修訂為“...而第(1)款具有效力在，猶如提述一個月是提述該延長的限期的情況下具有效力。”。經審視條文後，政府當局認為第 313(6)條現時的行文足夠清晰，故此並沒有就這方面提出修正案。

財經事務及庫務局

公司註冊處

二零一二年四月二十七日

**305. Place where register must be kept available for inspection**

- (1) A company must keep its register of debenture holders available for inspection at—
  - (a) the company's registered office; or
  - (b) a place prescribed by regulations made under section 648.
- (2) A company must notify the Registrar of the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 154<sup>1</sup> days after the register is first kept at that place.
- (3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 154<sup>2</sup> days after the change.
- (4) Subsection (2) does not apply in relation to a register of debenture holders that, since it came into existence on or after the commencement date of this Division, has been kept at the company's registered office at all times.
- (5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

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<sup>1</sup> Item 1/第 1 項

<sup>2</sup> Item 1/第 1 項

**306. Right to inspect and request copy**

- (1) Except when the register of debenture holders of a company is closed under section 308, the register must be open to inspection—
  - (a) by any person who is registered in the register as a debenture holder of the company, without charge;
  - (b) by any member of the company, without charge; and
  - (c) by any other person, on payment of a prescribed fee.
- (2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of—
  - (a) the register of debenture holders of a company; or
  - (b) any part of the register.
- (3) A debenture holder of a company or the trustee for all debenture holders of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any trust deed or any other document securing the issue of the debentures.
- (4) If a person makes a request under subsection (2) or (3), the company must provide the copy to the person within the prescribed period after it receives the request and prescribed fee.
- (5) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (6) If a company contravenes subsection (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

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(7) If a company contravenes subsection (4), the Court may by order direct that the copy be provided to the person requesting it.

~~(8) The Court must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) or (3) (as the case may be) are being abused.<sup>3</sup>~~

(9) In this section—

*prescribed* (訂明) means prescribed by regulations made under section 648.

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<sup>3</sup> Item 2/第 2 項



**309. Branch register of debenture holders**

- (1) If a company issues in a place outside Hong Kong a series of debentures, or any debenture stock, that are not transferable by delivery, the company may, if it is authorized to do so by its articles, cause to be kept there a branch register of the holders of the debentures or debenture stock who are resident there.
- (2) A company that begins to keep a branch register must deliver to the Registrar for registration a notice in the specified form within 15<sup>4</sup> days after doing so, stating the address where the branch register is kept.
- (3) A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 15<sup>5</sup> days after the change.
- (4) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

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<sup>4</sup> Item 1 / 第 1 項

<sup>5</sup> Item 1 / 第 1 項

**310. Keeping of branch register**

- (1) A branch register must be kept in the same manner in which the company's register of debenture holders (~~in this section called~~<sup>6</sup> *the principal register*) is by this Ordinance required to be kept.
- (2) A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 308 except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.
- (3) A company that keeps a branch register—
  - (a) ~~must cause to be kept at the place where the company's principal register is kept a duplicate of the branch register; and must transmit to its registered office a copy of every entry made in the branch register as soon as possible after it is made; and~~
  - (b) must, within 15 days after an entry is made in the branch register—
    - (i) transmit to its registered office a copy of the entry;  
and
    - (ii) update the duplicate of the branch register.

~~must cause to be kept at the place where the company's principal register is kept a duplicate of the branch register entered up from time to time.~~<sup>7</sup>
- (4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.

<sup>6</sup> Item 3(I) / 第 3(I) 項

<sup>7</sup> Item 3(II) / 第 3(II) 項

- (5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.
- (6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

**312. Discontinuance of branch register**

- (1) A company may discontinue a branch register.
- (2) If a company discontinues a branch register, all the entries in that register must be transferred to—
  - (a) some other branch register kept in the same place outside Hong Kong by the company; or
  - (b) the company's register of debenture holders.
- (3) If a company discontinues a branch register, it must, within 154<sup>8</sup> days after the discontinuance, deliver to the Registrar for registration a notice in the specified form informing the Registrar of—
  - (a) the discontinuance; and
  - (b) the register to which the entries have been transferred.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

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<sup>8</sup> Item 1 / 第 1 項

**319. 轉讓的證明**

- (1) 公司對其債權證或債權股證的轉讓文書作出的證明 —
  - (a) 是由該公司向基於信賴該證明而行事的人作出的一項陳述，其內容為該公司已獲出示文件，而該等文件證明該等債權證或債權股證的所有權屬於在該轉讓文書內列名的出讓人；及
  - (b) 並非一項內容為該出讓人對該等債權證或債權股證<sup>9</sup>有所有權的陳述。
- (2) 如某人基於對某公司疏忽地作出的虛假證明的信賴而行事，該公司對該人的法律責任，與猶如該項證明是欺詐地作出該公司便須負上的法律責任一樣。
- (3) 就本條而言，如轉讓文書載有 —
  - (a) “certificate lodged”字樣，或具有相同意思的英文或中文文字；及
  - (b) 由具有實際或表面權限代表公司證明轉讓的人，在該等文字下方或旁邊作出的簽署或簡簽，則該轉讓文書即屬經該公司證明。
- (4) 除非相反證明成立，否則 —
  - (a) 如第(3)(b)款所述的轉讓文書所載的簽署或簡簽，看來是某人的簽署或簡簽，該簽署或簡簽須視為該人的簽署或簡簽；而
  - (b) 該簽署或簡簽須視為由該人加於該轉讓文書上，或由具有實際或表面權限為代表有關公司證明轉讓而使用該簽署或簡簽的另一人，加於該轉讓文書上。

<sup>9</sup> Item 4 / 第 4 項

**322. 遺囑認證書批給等的證據**

就債權證的轉讓或獲得<sup>10</sup>債權證的權利的傳轉而言，如有文件向公司出示，而在法律上，該文件是某死者的遺囑認證書或某死者的遺產管理書的批給的充分證明，則該公司須接受該文件為該項批給的充分證據。

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<sup>10</sup> Item 5 / 第 5 項

**324. 永久債權證**

- (1) 即使衡平法有任何相反規定，載於任何債權證內的條件，或載於保證任何債權證的發行的契據內的條件，**並不會**<sup>11</sup>僅因該條件使該等債權證符合以下說明而無效 —
- (a) 不可贖回；
  - (b) 只可在有某事件發生時贖回(不論該事件發生的可能性有多低)；或
  - (c) 只可在某段期限屆滿時贖回(不論該段期限有多長)。
- (2) 第(1)款適用於在任何時間發行的債權證，及在任何時間簽立的契據。

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<sup>11</sup> Item 6 / 第 6 項

**325. Power to reissue redeemed debentures**

- (1) This section applies if a company has, whether before, on or after the commencement date of this section, redeemed any debentures previously issued.
- (2) A company has, and is to be regarded as always having had, the power to reissue redeemed debentures, either by reissuing the same debentures or by issuing new debentures in their place, unless—
  - (a) a provision to the contrary (express or implied) is contained in the company's articles or any contract made by the company; or
  - (b) the company has, by passing a resolution to that effect or by any other act, manifested its intention that the debentures are to be cancelled.
- (3) On a reissue of any redeemed debentures, a person entitled to the debentures has, and is to be regarded as always having had, the same priorities as if the debentures had never been redeemed.
- (4) A reissue of redeemed debentures, whether before, on or after the commencement date of this section—
  - (a) is to be regarded as an issue of new debentures for the purposes of stamp duty; and
  - (b) is not to be regarded as an issue of new debentures for the purposes of any provision limiting the amount or number of debentures to be issued.
- (5) A person lending money on the security of any debentures reissued under this section that appear to be stamped may give the debentures in evidence in any proceedings for enforcing the person's security.



~~(5A) If a person gives the debentures in evidence in any proceedings for enforcing the person's security under subsection (5), the stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of the reissue of the debentures are to be paid by the company.~~<sup>12</sup>

(6) Subsections (5) and (5A) does<sup>13</sup> not apply if the person had notice or, but for the person's negligence, might have discovered that the debentures were not stamped.

~~(7) The stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of any debentures reissued under this section are to be paid by the company.~~<sup>14</sup>

(8) If any debentures redeemed before 1 July 1933 are reissued on or after that date, the reissue does not prejudice, and is to be regarded as never having prejudiced, any right or priority that a person would have had under or by virtue of any mortgage or charge created before that date.

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<sup>12</sup> Item 7 / 第 7 項

<sup>13</sup> Item 7 / 第 7 項

<sup>14</sup> Item 7 / 第 7 項

**329. 受託人對債權證持有人的法律責任**

(1) 載於 —

- (a) 保證債權證的發行的信託契據內的任何條文；或
- (b) 與以信託契據保證的債權證的持有人訂立的合約內的任何條文，

在下述範圍內屬無效：在顧及該信託契據中授予受託人權力、權限或酌情決定權的條文後，(a)或(b)段所述條文，會豁免該受託人因未有表現出該受託人身為受託人所須有的謹慎及努力以致違反信託而須負有的法律責任；或會就因上述情況違反信託而須負有的法律責任，彌償該受託人。

(2) 第(1)款 —

- (a) 不會使符合以下說明的責任解除書失效：就受託人在該責任解除書發出前的作為或不作為，從其他方面有效地發出的；
- (b) 不會使任何符合以下說明的條文失效 —
  - (i) 使該責任解除書得以在一次為有關目的而召開的會議上，在獲持有價值不少於最少<sup>15</sup>75%的多數債權證持有人親自出席或委任代表(如准許委任代表的話)出席和表決同意下發出的；及
  - (ii) 使該責任解除書得以就特定的作為或不作為而發出的，或使該責任解除書得以在有關受託人死亡時或不再擔任有關受託人時發出的；
- (c) 不會使任何在 1984 年 8 月 31 日時有效的條文失效，但前提是當時有權享有該條文的利益或其後根據第(3)款

<sup>15</sup> Item 8 / 第 8 項

獲給予該條文的利益的人，維持擔任有關信託契據的受託人；或

- (d) 不會剝奪任何人於(c)段所述的條文有效時就其作為或不作為而獲得的豁免，或就該等作為或不作為而獲得彌償的權利。
- (3) 當信託契據的受託人仍有權享有第(2)(c)或(d)款所保留的條文的利益時，該條文的利益可按照第(4)款而給予 —
- (a) 該信託契據的所有現時及未來受託人；或
  - (b) 該信託契據的任何指名受託人，或建議獲委任為該信託契據的受託人的人。
- (4) 有關利益須藉一項決議而給予，而該決議須在 —
- (a) 按照有關信託契據為此而召開的會議上；或
  - (b) (如該信託契據並未訂定召開會議的條文)以原訟法庭批准的方式為此而召開的會議上，
- 獲持有價值不少於最少<sup>16</sup>75%的多數債權證持有人親自出席或委任代表(如准許委任代表的話)出席會議通過。

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<sup>16</sup> Item 8 / 第 8 項

**330. — Immunity of trustees for debenture holders**

~~A trustee for a debenture holder is not liable for anything done, or omitted to be done, in accordance with any direction given to the trustee at a meeting held under section 328.<sup>17</sup>~~

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<sup>17</sup> Item 9 / 第 9 項