

**Bills Committee on Companies Bill**

**Comparison Table for Part 14 –  
Remedies for Protection of Companies’ or Members’ Interests**

**PURPOSE**

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To facilitate clause-by-clause examination of Part 14 (Remedies for Protection of Companies’ or Members Interests) of the Companies Bill (“CB”), this paper provides a comparison table, at Annex, on the provisions in Part 14 and relevant provisions in the Companies Ordinance (Cap. 32) (“CO”) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 14 are set out in sections 116 to 119 of Schedule 10.

**PART 14 OF THE CB**

2. The major proposals and policy issues concerning Part 14 are set out in Annex B to LegCo Paper No. CB(1)2389/10-11(01), which was considered by Members at the meeting of 28 June 2011. Members did not raise any specific issues for the Administration to follow up.

**ADVICE SOUGHT**

3. Members are invited to note the contents of the paper and provide their views.

**Financial Services and the Treasury Bureau  
Companies Registry  
6 January 2012**

**Comparison Table for Part 14**

This table includes provisions in the third (i.e. “Derivation”) column that indicate the corresponding or original section in the Companies Ordinance (“CO”) of the clause concerned in the CB, where applicable. Where reference has been made to the relevant statutory provision(s) in other jurisdictions, such provision(s) is/ are also cited in that column. We use the term “Existing law” to mean that the clause is restating an existing section in the CO as set out in the “Derivation” column without change in substance, although the actual wording may be different from the existing section as improvements are made to the drafting language and style.

A list of abbreviations used is as follows –

ACA: Australia Corporations Act 2001

CO: Companies Ordinance (Cap. 32)

UKCA 2006: United Kingdom Companies Act 2006

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
<b>Division 1: Preliminary</b>				
711	Interpretation	CO s.2(1) definition of <i>specified corporation</i>	“specified corporation” is defined as a company or a non-Hong Kong company.	Existing law plus new provision on the meaning of <i>articles</i> in sub-clause (2). Also, “company” (defined to include non-Hong Kong companies) is used instead of the term “specified corporation”. The change is in terminology only; there is no change in substance.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Division 2: Remedies for Unfair Prejudice to Members' Interests</b>				
712	Interpretation	CO s.168A(5), (5A) & (5B)	The personal representative of a deceased member, trustee of or person beneficially interested in the share are included in the meaning of "member".  The personal representative of a past member is included in the meaning of "past member".	Existing law.
713	When Court may order remedies	CO s.168A(1), (2), (2A) & (2B),  c.f. UKCA 2006 s.994(1), ACA s.232	It sets out the situations where the court may order remedies for unfair prejudice. Members and past members may petition the court for remedies if a specified corporation's affairs are or have been conducted in an unfairly prejudicial manner.	Existing law with new provisions to include proposed acts and omissions in the case of petitions by current members or by the Financial Secretary (Cl. 713(1)(b) & (2)(b)).
714	Remedies that Court may order	CO s.168A(2), (2B) & (2C)  c.f. UKCA 2006 s.996	It provides for the court's powers to order the remedies with a view to bringing to an end the matters complained of. The court may also order payment of damages, but damages solely reflective of the loss	Existing law with modification - (a) the requirement as to "with a view to bringing to an end the matters complained of" is removed and replaced with "as [the Court] thinks fit" (Cl. 714(1)(a));

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		ACA s.233	suffered by the specified corporation which only the specified corporation is entitled to are not recoverable.	(b) There is an express provision for the court to make an order requiring the doing of an act that the company has omitted or has proposed to omit to do (clause 714 (2)(a)(i)(C)).
715	Alteration of articles by order of Court	CO s.168A(3) & (4)	If the court's order alters or adds to the memorandum or articles, the specified corporation has no power to make any alteration or addition to the memorandum or articles inconsistent with the order. A copy of such order must be delivered to the Registrar for registration within 14 days.	Existing law.
716	Chief Justice may make rules			New provision giving CJ the power to make rules. Currently, the rules in the Companies (Winding up) Rules made under section 296 of the CO apply to proceedings under section 168A in so far as they are applicable.
<b>Division 3: Remedies for Others' Conduct in relation to Companies etc.</b>				
717	Application of section 718	CO s.5B(2), s.350B(1)& (3)	It sets out the situations where the court may grant an injunction restraining certain acts or conduct or requiring that	Existing law with modification to cover: (a) conduct engaged or proposed to be

Clause	Contents	Derivation	Position in CO	Position in CB
			certain acts or things be done.	engaged in prior to the commencement of the CB and which is still subsisting after that commencement (Cl. 717(2)); and (b) Refusal or failure, or proposing to refuse or fail, to do an act or thing prior to the commencement of the CB and which is still subsisting after that commencement (Cl. 717(3)).
718	Court may order remedies	CO s.350B(1), (2), (3), (4), (7) & (8)	It provides for the court’s power to grant an injunction or order the payment of damages upon application by an affected member or creditor or by the Financial Secretary.	Existing law plus a new provision to empower the court to declare a contract to be void or voidable, which is modelled on s.213(2)(e) of Securities and Futures Ordinance (Cl. 718(1)(c) & (2)(c)).
719	Provisions supplementary to section 718	CO s. 350B(5) & (6)	It provides that the court may grant an interim injunction and may discharge or vary an injunction or interim injunction.	Existing law plus a new power to grant interim damages.
<b>Division 4: Derivative Action for Remedies for Misconduct against Companies etc.</b>				
720	Interpretation	CO s.168BA, s.168BB(2)	It sets out the meaning of the terms “proceedings”, “related company” and	Existing law, except that “misconduct” is used instead of “misfeasance”. The

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			“mifeasance” for the purpose of Part IVAA.	change is in terminology only; there is no change in substance.
721	Member of company or of associated company may bring or intervene in proceedings	CO s.168BB(1), s.168BC(1), (2), (4) & (6)	It sets out the situations where a member of a specified corporation or of a related company may, with the leave of court, bring or intervene in proceedings on behalf of the specified corporation. The right to bring a common law derivative action is not affected.	Existing law, except that “company” (defined in clause 711 as including a non-HK company) is used instead of “specified corporation” and “associated company” (defined in clause 2(1)) is used instead of “related company”. The change is in terminology only; there is no change in substance.
722	Leave of Court to bring or intervene in proceedings	CO s.168BC(3) & (5), s.168BD	It provides for the court’s powers to grant leave to bring a statutory derivative action if prima facie it is in the interest of the specified corporation that leave be granted and there is a serious question to be tried (if leave is sought to bring proceedings).	Existing law with modification that service of the written notice can be made by post (clause 722(3)(a)).
723	Approval or ratification of conduct does not bar derivative action	CO s.168BF	It provides that approval or ratification shall not: (a) prevent the bringing of a statutory derivative action or applying for leave; (b) require the court to refuse to grant leave; or	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>(c) require the court to determine the proceedings brought or intervened in by the member in favour of the defendant.</p> <p>But the approval or ratification may be taken into account in deciding what judgment or order should be made.</p>	
724	No discontinuance or settlement of proceedings without leave of Court	CO s.168BJ	It provides that proceedings brought or intervened in may only be discontinued or settled with the leave of court.	Existing law.
725	Court may dismiss derivative proceedings brought by member under common law etc.	CO s.168BE	It empowers the court to strike out or amend any pleadings, or to stay, dismiss or enter judgment in the proceedings, which was brought or intervened in under the common law subsequent to the granting of leave for a statutory derivative action.	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
726	Court's general powers to order and direct	CO s.168BG	It provides for the court's discretion to make any order or direction it considers appropriate, including making interim orders and appointing an investigator.	Existing law.
727	Court may order costs	CO s.168BI	It provides for the court's powers to make cost orders including indemnification for costs.	Existing law.
<b>Division 5: Members' Inspection of Company's Records</b>				
728	Interpretation	CO s.2.(8A)	It provides that "record" includes book and paper.	Existing law.
729	Court may order inspection of records	CO s.152FA, s.152FB	It provides for the court's powers to make an order for inspection of company records on an application by certain number of members, if it is satisfied that the application is made in good faith and for a proper purpose.	Existing law.
730	Preservation of secrecy	CO s.152FC	It provides safeguards against improper disclosure or use of information or documents obtained as a result of an inspection.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
731	Legal professional privilege	CO s.152FD	It provides that nothing in s.152FA and 152FB or any order made under these sections shall authorize an inspection of records containing information that is subject to professional privilege.	Existing law.
<b>Schedule 10 : Transitional and Saving Provisions</b>				
116 to 119				<p>New provisions to provide transitional and saving arrangements in the following areas :-</p> <ul style="list-style-type: none"> <li>(a) pending petition under s.168A of the CO (Cl. 116);</li> <li>(b) application for injunction under s.350B(1)(g) and (h) of the CO made before the commencement of the CB (Cl. 117);</li> <li>(c) application for statutory derivative action made and proceedings brought or intervened in before the commencement of the CB (Cl. 118); and</li> <li>(d) application for inspection of company's records made before the commencement of the CB (Cl. 119).</li> </ul>