

Bills Committee on Companies Bill

**Comparison Table for Part 16 –
Non-Hong Kong Companies**

PURPOSE

To facilitate clause-by-clause examination of Part 16 (Non-Hong Kong Companies) of the Companies Bill (“CB”), this paper provides a comparison table, at **Annex**, on the provisions in Part 16 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 16 are set out in sections 124 to 132 of Schedule 10.

PART 16 OF THE CB

2. The major proposals and policy issues concerning Part 16 are set out in Annex A to LegCo Paper No. CB(1)1671/10-11(04), which was considered by Members at the meeting of 29 March 2011. Members expressed concerns about the proposal which allows companies to appeal to the Administrative Appeals Board against certain decisions made by the Registrar of Companies, and the legal liabilities of authorized representatives of non-Hong Kong companies for acts on behalf of such companies in Hong Kong. We have subsequently provided supplementary information to Members via LegCo Paper No. CB(1)1879/10-11(02).

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
27 January 2012**

Comparison Table for Part 16

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 wordings 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)

SCA: Singapore Companies Act

UKCA 2006: United Kingdom Companies Act 2006

Clause	Contents	Derivation	Position in CO	Position in CB
Division 1: Preliminary				
762(1)	Interpretation	CO s.341(1),	Part XI of CO contains provisions for companies	Existing law plus definitions for new terms used in Part 16:

Clause	Contents	Derivation	Position in CO	Position in CB
		s.341(2)(a) s.333(2)(e) s.333(5), 24 th Schedule	incorporated outside Hong Kong. CO s.341 provides a number of definitions of terms which are used in Part XI including: (i) “authorized representative”; (ii) “place of business” and (iii) “solicitor”.	<ul style="list-style-type: none"> ● “approved name”; ● “corporate name”; ● “Domestic name”; ● “procedural regulations”; ● “required details” – the required details for authorized representative are those as required under CO s.333(2)(e) <p>A Committee Stage Amendment (“CSA”) will be moved to delete the definition of “responsible officer” and to replace all reference to “responsible officer” in the CB by responsible person” as defined in Part 2.</p>
762(2)	Interpretation	N/A	N/A	<p>(a) It provides for the reference to a “certified translation, in English or Chinese, of a domestic name”.</p> <p>(b) The reference to “certified translation” should be read with that defined in CB clause 4</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				(which follows Cap 32B Reg.6)
762(3)	Interpretation	CO 24th Schedule	The 24 th Schedule of CO specifies the office not included in the definition of “place of business”	Existing law
762(4)	Interpretation	CO s.360(10)	CO 360(10) provides that the Financial Secretary may by gazette amend the 24 th Schedule	Existing law
763	Certified copy	CO s.341(1), Cap 32B, Reg 3, CO s.359A(1)	Regulation 3 of Cap 32B provides for the requirements for certification of copy of documents to be delivered to the Registrar under Part XI.	Existing law except that under s.763(3): for amendment of the requirements, it would be done by the Secretary for Financial Services and the Treasury instead of the Chief Executive in Council.

Clause	Contents	Derivation	Position in CO	Position in CB
Division 2: Registration				
764(1) 764(2) 764(3)	Certain non-Hong Kong companies must apply for	CO s.332 s.333(1) & (9)	It provides for registration of any company incorporated outside Hong Kong that has a place of business in Hong Kong.	Existing law
764(4)	Registration	CO s.333(2) s.333(3)	It provides for the details to be contained in the specified form and documents to be delivered under the application.	Existing law except that the particulars to be contained in the specified form and the documents to be delivered to the Registrar shall be prescribed by procedural regulations.
764(5)		CO s.333(2)(a) s.333(3)	Under the CO, the applicant is required to provide a certified copy of the memorandum and certificate of incorporation together with a certified translation thereof if the instrument/certificate is in a language other than English or Chinese.	A new provision clarifying application procedure where the company has no domestic name in Roman script or in Chinese.

Clause	Contents	Derivation	Position in CO	Position in CB
764(6)		CO s.340	If any non-Hong Kong company fails to comply with Part XI of CO, every officer or agent of the company who authorizes or permits the default is liable to a fine and a daily default fine.	Existing law plus a modified offence provision: (a) replacement of “officer who authorizes or permits the default” by “responsible person”; and (b) the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$1,000.
765	Registration of non-Hong Kong company	CO s.333AA(2)	It provides that upon receipt of the document required to be provided under s.333, the Registrar shall enter the name of the company in the register, register the documents and issue a certificate of registration.	Existing law plus new provisions clarifying the registration procedure on name and its certified translation (subclauses (2) & (3)).
Division 3: Addition, Change or Cessation of Corporate Name				
766	Company must notify	CO s.335(2) &	It requires a non-Hong Kong company to notify the Registrar	Existing law plus: (a) new provisions clarifying the notification

Clause	Contents	Derivation	Position in CO	Position in CB
	Registrar of addition, change or cessation of name or translation of name	s.340	of any change of corporate name.	<p>requirements in various scenarios of change of name (subclauses (1) to (7)); and</p> <p>(b) a modified offence provision (subclause (10)):</p> <p>(i) replacement of “officer who authorizes or permits the default” by “responsible person”;</p> <p>(ii) the maximum penalty level prescribed for the offence is lowered from level 5 to level 3; and</p> <p>(iii) the maximum amount of further fine prescribed for the offence is lowered from HK\$700 to HK\$300.</p>
767	Registration of corporate name	CO s.335(3)	It provides that upon receipt of the requisite documents for change of corporate name, the Registrar shall register the return and issue a fresh certificate of registration with the name so	Existing law with new provisions clarifying the registration procedures. (subclauses (1)(a), (2) to (7))

Clause	Contents	Derivation	Position in CO	Position in CB
			changed.	
Division 4: Regulation of Names Used by Registered Non-Hong Kong Companies to Carry on Business in Hong Kong				
768	Registrar may serve notice to regulate use of corporate names or approved names	CO s.337B(1), s.337B(2), s.337B(2A)	<p>It empowers the Registrar to serve a notice where the Registrar is satisfied that the corporate name is the same or is too like a previous registered name or gives so misleading an indication of the nature of the Company's business in Hong Kong as to be likely to cause harm to the public.</p> <p>The notice shall not be served later than 6 months from date of registration of the corporate name or change of corporate name.</p>	Existing law with a new provision (cl.768 (4)) setting out details of the reference to "material date" for the purpose of counting the 6 months' period.

Clause	Contents	Derivation	Position in CO	Position in CB
769	Effect of notice	CO s.337B(5) s.337B(7)	It provides that a non-Hong Kong company on which a notice under s.337B(1) is served shall not at any time after 2 months from the date of service carry on business in Hong Kong under its corporate name.	Existing law plus a modified offence provision: (a) replacement of “officer who knowingly and wilfully authorizes or permits the default” by “responsible person” (subclause (2)); and (b) the punishment of imprisonment is taken out from this offence; the maximum penalty level of the offence is increased from level 5 to level 6; and the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$2,000 (subclause (3)).
770	Registration of approved name for carrying on business in Hong Kong	CO s.337B(3)(a), s.337B(4)	It provides for the procedure where a non-Hong Kong company on which a notice under s.337B(1) is served may propose a trade name other than its corporate name for the approval of the Registrar.	Existing law with new provisions clarifying the procedures and requirements for registration of approved name (subclauses (1) to (3) & (5)).
771	Withdrawal of notice	CO s.337B(6A)	It empowers the Registrar to withdraw the notice served	Existing law except that:

Clause	Contents	Derivation	Position in CO	Position in CB
		s.337B(6B)	under s.337B(1). It provides that s.337B(5) shall cease to apply upon withdrawal of the said notice.	A new provision (cl.771 (3)) is added setting out the procedures after service of the notice of withdrawal for the scenario where an approved name had been entered in the Register.
772	Appeal against decision to serve notice	CO s.337B(6)	The company is given 3 weeks to apply to the court to set aside the s.337B(1) notice.	Existing law is replaced by a new provision giving non-Hong Kong company a right to appeal to the Administrative Appeals Board.
773	Change of approved name	CO s.337B(3)(b), s.337B(4)	It provides for the requirement and registration of a change of approved name.	Existing law with new provisions clarifying the procedures and requirements for registration of change of approved name. (subclauses (1) to (3) & (5))
Division 5: Authorized Representatives of Registered Non-Hong Kong Companies				
774	Company must keep authorized representative's required details	CO s.333A, s.340	It imposes a continuing obligation upon a non-Hong Kong company to maintain the registration of an authorized	Existing law except: (a) a modified offence provision (subclause (4)): (i) replacement of "officer who authorizes

Clause	Contents	Derivation	Position in CO	Position in CB
	registered in Companies Register		representative until the expiration of one year after the company has ceased to maintain a place of business in Hong Kong.	<p>or permits the default” by “responsible person”;</p> <p>(ii) the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$1,000; and</p> <p>(b) a new provision clarifying the position when by the time a company’s only authorized representative ceases to be such representative, the company has ceased to have a place of business in Hong Kong for at least 11 months.</p>
775	Termination of authorization	CO s.333B	It allows the authorized representative and the company to terminate the authorization and it requires notification to the Registrar of the termination.	Existing law except that the documents required to be filed with the specified form (which are currently set out in s.333B(2) of CO) will be prescribed by the procedural regulations.

Clause	Contents	Derivation	Position in CO	Position in CB
Division 6: Returns and Accounts of Registered Non-Hong Kong Companies				
776	Company must deliver annual return for registration	CO s.334(1) s.334(2), s.340	It provides for annual returns to be made by non-Hong Kong companies.	Existing law except that: (a) the particulars to be contained in the specified form and the documents to be submitted shall be prescribed by procedural regulations; (b) the offence provision is modified (subclause (3)): (i) replacement of “officer who authorizes or permits the default” by “responsible person”; (ii) the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$1,000; and (c) there is a new provision empowering the magistrate to make an order for delivering of a return for registration and a corresponding new offence provision upon contravention, which provisions follow that for a local

Clause	Contents	Derivation	Position in CO	Position in CB
				company under cl.653(7) and (8) of CB (subclauses (4) & (5)).
777	Company must deliver accounts for registration	CO s.336(1) s.336(2) s.336(3) s.340	It provides for filing of accounts and certified translation in the circumstances mentioned in the section.	Existing law except that: (a) there is a modified offence provision (subclause (3)): (i) replacement of “officer who authorizes or permits the default” by “responsible person”; (ii) the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$1,000; (b)there is a new provision empowering the magistrate to make an order for delivering of a certified copy of accounts for registration and a corresponding new offence provision upon contravention, which provisions follow that for a local company under cl.653(7) and (8) of CB (subclauses (4) & (5)); and

Clause	Contents	Derivation	Position in CO	Position in CB
				(c) a new requirement that only accounts “for a period of at least 12 months” is required to be registered under subclause (2).
778	Directors may revise accounts not complying with certain requirement	CO s.336A, s.340	<p>The provision allows the director to cause accounts that had been registered to be revised.</p> <p>It requires the filing of a warning statement if there is a decision to revise the accounts.</p>	<p>Existing law except that:</p> <p>(a) the prescribed period for filing of a warning statement being “as soon as practicable after the decision” in s.336A(3) of CO is replaced with “within 7 days after the decision” so as to ensure certainty for the purpose of enforcement (subclause (4)); and</p> <p>(b) the offence provision is modified (subclause (5)):</p> <p>(i) replacement of “officer who authorizes or permits the default” by “responsible person”;</p> <p>(ii) the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$1,000.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
779	Company must deliver return for registration in case of change of certain particulars	CO s.335(1), s.340	It requires a non-Hong Kong company to notify the Registrar of changes of certain particulars relating to the company.	Existing law except that: (a) there is a new clause providing that the particulars to be contained in the specified form and the documents to be delivered will be prescribed by procedural regulations (subclause (3)); (b) a new provision in subclause (4) in relation to the Registrar's power to make protected address available for inspection; (c) a CSA will be moved to amend the penalty to: (i) Level 3 with a further daily default fine of \$300 (in respect of clause 779(1) and (2)(a)); (ii) Level 4 with a further daily default fine of \$700 (in respect of clause 779(1), (2)(b) and (2)(c)); and (d) with the CSA, the offence provision is modified (subclause (5)): (i) replacement of "officer who authorizes or permits the default" by "responsible

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>person”;</p> <p>(ii) the maximum penalty level is lowered from level 5 to level 3 and maximum amount of further fine is lowered from HK\$700 to HK\$300 (in respect of clause 779(1) and (2)(a));</p> <p>(iii) the maximum penalty level is lowered from level 5 to level 4 (in respect of clause 779(1), (2)(b) and (2)(c));</p> <p>(iv) the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$1,000 (in respect of clause 799(1) and (2)(d).</p>
Division 7 - Other Obligations				
780	Non-Hong Kong company must state names,	CO s.337, s.340	It imposes obligations on a non-Hong Kong company to state in specified documents or places the company’s name,	Existing law except: (a) modified offence provisions: (A) clause 780(7)

Clause	Contents	Derivation	Position in CO	Position in CB
	place of incorporation, etc.		whether members have limited liability and the company's place of incorporation.	<ul style="list-style-type: none"> (i) replacement of “officer who authorizes or permits the default” by “responsible person”; (ii) a CSA will be moved to include a daily default fine of \$300; (iii)with the CSA, the maximum penalty level of the offence is lowered from level 5 to level 3 and the maximum amount of further fine prescribed for the offence is lowered from HK\$700 to HK\$300; <p>(B) clause 780(8)</p> <ul style="list-style-type: none"> (i) replacement of “officer who authorizes or permits the default” by “responsible person”; (ii) the maximum penalty level of the offence is lowered from level 5 to level 3 and the maximum amount of further fine prescribed for the offence is

Clause	Contents	Derivation	Position in CO	Position in CB
				<p style="text-align: center;">lowered from HK\$700 to HK\$300; and</p> <p>(b) a new provision to clarify the meaning of references to non-Hong Kong company's name (subclause (9)).</p>
781	Registered non-Hong Kong company must notify Registrar of commencement of liquidation etc.	CO s.337A, s.341(2)(c) s.158(10)(b), s.158(10)(e), s.340	It requires a non-Hong Kong company to notify the Registrar of commencement of liquidation of the company.	<p>Existing law except:</p> <p>(a) a modified offence provision (subclause (7)):</p> <p style="padding-left: 20px;">(i) replacement of “officer who authorizes or permits the default” by “responsible person”;</p> <p style="padding-left: 20px;">(ii) the maximum penalty level of the offence is lowered from level 5 to level 3; and the maximum amount of further fine prescribed for the offence is lowered from HK\$700 to HK\$300; and</p> <p>(b) a new provision expressly distinguishing the further particulars of the liquidator to be furnished depending on whether the liquidator is a natural person (subclause</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				(4)(d).
782	Registered non-Hong Kong company must notify Registrar of cessation of place of business in Hong Kong	CO s.339, s.340	It requires a non-Hong Kong company to notify the Registrar of cessation of place of business in Hong Kong.	Existing law plus a modified offence provision (subclause (3)): <ul style="list-style-type: none"> (a) replacement of “officer who authorizes or permits the default” by “responsible person”; and (b) the maximum penalty level of the offence is lowered from level 5 to level 3; and the maximum amount of further fine prescribed for the offence is lowered from HK\$700 to HK\$300.
783	Authorized representative of registered non-Hong Kong company must notify	CO s.339AA, s.340	It requires an agent of a non-Hong Kong company to notify the Registrar of the dissolution of the company.	Existing law except that: <ul style="list-style-type: none"> (a) the provision is clarified to expressly impose the filing obligation on the authorized representative (subclause (1)); (b) the maximum penalty level of the offence is lowered from level 5 to level 3; and the maximum amount of further fine prescribed

Clause	Contents	Derivation	Position in CO	Position in CB
	Registrar of dissolution			for the offence is lowered from HK\$700 to HK\$300 (subclause (3)); and (c) it is a defence for the person charged with an offence to establish that the person took all reasonable steps to secure compliance. (subclause (4))
Division 8: Striking off				
784	Registrar may send inquiry letter to registered non-Hong Kong Company	CO s.339A, s.291(1), s.291(2), s.291(3) s.291(5) s.291(6)	(a) It empowers the Registrar to strike off a non-Hong Kong company where the Registrar has reasonable cause to believe that the Company ceased to have a place of business in Hong Kong. (b) It provides that the provisions under the CO relating to striking off of	(a) Existing law. (b) It follows CB cl.732 with necessary adaptation for non-Hong Kong companies regarding the addressee of the letter of enquiry.
785	Registrar must follow up under certain circumstances	c.f. CB cl.732 cl.733,		(a) It streamlines the procedure by synchronizing the publication of the Gazette notice with the sending of the second letter. (b) It follows CB cl.733 with necessary

Clause	Contents	Derivation	Position in CO	Position in CB
		cl.734	defunct companies shall extend and apply accordingly with such adaptations as are necessary. Provisions for striking off a defunct company are in CO s.291.	adaptation for non-Hong Kong companies regarding the addressee of the second letter. (c) Under clause 785(2) (cf s. 291(2) of CO), the Registrar must send the second letter within 30 days (instead of within 14 days) from expiration of one month after the sending of the first letter pursuant to clause 784 (cf s. 291(1) of CO).
786	Registrar may strike off registered non-Hong Kong company's name			Existing law except that: (a) there is a new clause (cl. 786 (3)) providing for the effect of publication of a notice indicating that the company's name has been struck off the Register; and (b) there is a new provision (cl 786 (4)) prohibiting a non-Hong Kong company from having a place of business in Hong Kong when it has been struck off the Register and any contravention shall be an offence with the following penalty (cl 786 (5)):

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>the maximum penalty level of the offence is level 5; and the maximum amount of further fine prescribed for the offence is HK\$1,000.</p>
787	Application to Registrar for restoration of non-Hong Kong company	c.f. CB cl.748	It provides for restoration of the company by order of the court.	<p>(a) It provides for administrative restoration, a new procedure which replaces the requirement for application to court for restoration.</p> <p>(b) It follows CB cl.748 with necessary adaptation for the case of non-Hong Kong companies. An application must be made within 6 years after the date of the striking off. This is different from the case of a local company in respect of which an application for administrative restoration must be made within 20 years after the date of the dissolution. There is a difference by reason of the different effect of striking off for the two types of companies. Upon publication of a Gazette notice of striking off, a local company will be dissolved (see</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				cl. 734(3) and 735(8)) whereas a non-Hong Kong company will not (see cl.786(3)). Creditors of a non-Hong Kong company may still have redress against the company notwithstanding the striking off of the company from the Register. Hence, there is not a need to align with the local company in respect of the 20 years' period.
788	Conditions for Granting application	c.f. CB cl.749	N/A	It follows CB cl.749 with necessary adaptation for the case of non-Hong Kong companies.
789	Registrar's decision on application	c.f. CB cl.750	N/A	Cl.789(1) & (2) follow CB cl.750. There is a subclause (cl. 789 (3)) providing for the effect of restoration.
Division 9 - Miscellaneous				
790	Registrar to keep index of	CO s.333C	It requires the Registrar to keep an index of directors of	Existing law plus new provision preventing public inspection of the usual residential address

Clause	Contents	Derivation	Position in CO	Position in CB
	directors		non-Hong Kong companies.	and the full identification number of directors (subclause (4) & (5)) (see clause 638 for index of directors for Hong Kong companies).
791	Service of process or notice	CO s.338	It provides for service of documents on non-Hong Kong companies.	Existing law with a new provision (cl.791(5)) clarifying service of documents on non-Hong Kong companies which are not registered.
792	Financial Secretary may make regulations	CO s.359A(3)(b), s.359A(5), s.359A(6)	It empowers the Chief Executive in Council to make regulations concerning the revision of accounts.	Existing law except that: (a) the power is to be exercised by FS under the CB instead of the Chief Executive in Council under the CO (subclause (1)); and (b) regarding offence provisions, the maximum amount of further fine prescribed for the offence is increased from HK\$700 to HK\$2,000 (subclause (4)).
793(1)	Financial Secretary may make		ss.333, 333B, 334 and 335 of CO set out the required particulars and documents for	Procedural and technical details concerning the application for registration, notification and returns to be made are moved to the subsidiary

Clause	Contents	Derivation	Position in CO	Position in CB
	regulations		the following application/return: (a) Application for registration; (b) Notice of termination of authorized representative; (c) Annual return; and (d) Change of particulars.	legislation to facilitate future updating
793(2)	Financial Secretary may make regulations	N/A	N/A	New provision for procedural details concerning certification of translation of domestic name for non-mandatory cases.
793(3)	Financial Secretary may make regulations	N/A	N/A	The requirement on certified translation is provided under clause 4 of CB (which follows Reg. 6 of Cap 32B).

Clause	Contents	Derivation	Position in CO	Position in CB
Schedule 10: Transitional and Saving Provisions				
124-132	Transitional and Saving Arrangements for Part 16	N/A	N/A	<p>New provisions to provide transitional and saving arrangements in the following areas:-</p> <ul style="list-style-type: none"> (a) application for registration; (b) registered particulars of authorized representative; (c) registration of return; (d) notice to regulate use of corporate names; (e) notice of cessation of place of business in Hong Kong; (f) notice of dissolution; (g) striking off; (h) restoration; and (i) certificates previously issued.