

Bills Committee on Companies Bill

**Comparison Table for Part 17 –
Companies not Formed, but Registrable, under this Ordinance**

PURPOSE

To facilitate clause-by-clause examination of Part 17 (Companies not Formed, but Registrable, under this Ordinance) of the Companies Bill (“CB”), this paper provides a comparison table, at Annex, on the provisions in Part 17 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 17 are set out in section 133 of Schedule 10.

PART 17 OF THE CB

2. The major proposals and policy issues concerning Part 17 are set out in Annex C to LegCo Paper No. CB(1)1671/10-11(03), which was considered by Members at the meeting of 29 March 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
1 February 2012**

Comparison Table for Part 17

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 –
CO: Companies Ordinance (Cap. 32)

Clause	Contents	Derivation	Position in CO	Position in CB
Division 1: Preliminary				
794	Interpretation	CO s.310(1), 313(b) and 323(4)	Section 310(1) provides for the eligibility of companies to register under Part IX. Section 323(4) provides for the meaning of “deed of settlement”. Section 313(b) provides that a copy of any Ordinance	Existing law with the following modifications: (a) CO s.310(1)(a) (stating that a company registered under the CO 1865 or the CO 1911 shall not register in pursuance of CO s.310)

Clause	Contents	Derivation	Position in CO	Position in CB
			etc. or other instrument constituting or regulating the company shall be delivered to the Registrar before the registration of a company (not being a joint stock company) under Part IX.	is removed as the sub-section is unnecessary in light of the new definition of “eligible company”; and (b) references to “joint stock company” are removed.
Division 2: Registration of Eligible Companies				
795	Registrar may register eligible company	CO s.310(1) and s.313	It provides for the registration of an eligible company as an unlimited company, or as a company limited by shares or guarantee upon delivery of the required documents to the Registrar. Only joint stock companies can register as a company limited by shares.	Existing law except : (a) registration as a company limited by shares is no longer possible as a result of the omission of the provisions on joint stock companies; and (b) the list of directors and managers in s.313(a) is not required as it will be included in the application form.
796	General restrictions	CO s.310(1)(b) ,	Section 310(1)(b) provides that a limited company (except a joint stock	Existing law except the references to joint stock company are removed.

Clause	Contents	Derivation	Position in CO	Position in CB
	on Registrar's power to register	and s.317	company) shall not register under the section. Section 317 imposes restrictions regarding the name of a company registered under Part IX.	
797	Registrar must not register without members' assent	CO s.310(1)(e) & (f) and 310(2)	It provides that a company shall not register under s.310 without the assent of the required majority of its members.	Existing law.
798	Registrar must not register without resolution declaring amount of guarantee	CO s.310(1)(g)	It provides that for a company limited by guarantee, a resolution declaring that each member undertakes to contribute to the assets of the company if the company is wound up is required.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
799	Eligible company must pay registration fee	CO s.318	Section 318 provides that payment of a fee is required. However, under s.316 no fees shall be charged if the company is not registered as a limited company, or if before its registration as a limited company, the liability of the shareholders was limited.	CO s.316 is not followed as the exemption from payment of fee cannot be justified.
800	Registrar must issue certificate of registration	CO s.318	It provides for the Registrar's duty to issue a certificate of registration.	Existing law.
Division 3: Consequences of Registration				
801	Application of Division	CO s.322(1)	It provides that the provisions of s.322 shall have effect when a company is registered under Part IX.	Existing law.
802	Status, property, rights and	CO s.318 and s.320	Section 318 provides that upon compliance with the requirements the Registrar certifies that the company is	Existing law except that s.319 (which provides that all property of the company shall on registration pass to

Clause	Contents	Derivation	Position in CO	Position in CB
	liabilities of eligible company		incorporated under the CO. Section 320 provides that registration does not affect the rights and liabilities of the company existing before registration.	and vest in the company as incorporated under the CO) is not adopted as there is no need to provide for vesting of property. Instead, it is provided in subclauses (2) & (3) that no new legal entity is created and the registration does not affect the company's property.
803	Continuation of existing proceedings	CO s.321	It provides for the continuation of pending actions and proceedings, provided that execution cannot be effected against the effects of an individual member. It also provides for the court's power to wind up the company if the company's assets are not sufficient to satisfy a court judgment or order.	Existing law.
804	Continuation of existing constitutional document	CO s.322(2)	It provides that the ordinance or instrument constituting or regulating the company becomes part of the company's constitution upon its	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			registration in so far as they would have become part of the memorandum or articles of a company formed under the CO.	
805	Eligible company may substitute articles for non-statutory constitutional document	CO s.323	It enables a company to alter the form of its constitution by substituting a memorandum and articles for the deed of settlement constituting or regulating the company. So far as alteration of objects are concerned, it is to be governed by s.8 of CO subject to some modifications.	Existing law with revisions on the basis of clauses 84 and 86 (the corresponding provisions of s.8 of CO).
806	This Ordinance applies to eligible company	CO s.322(3) & (4)(a)	It provides that all provisions of the CO apply to a company registered under Part IX subject to some modifications.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
807	Exceptions to section 806(1)	CO s.322(3)(a), (c), (f) & (g)	It provides for certain restrictions and adaptations as a consequence of registration.	Existing law.
808	Eligible company's power to alter constitution	CO s.322(6)	It provides that nothing in the CO shall take away any power vested in the company to alter its constitution or regulations.	Existing law.
Schedule 10: Transitional and Savings Provisions				
133	Transitional and Saving Arrangements for Part 17	N/A		New provision to provide transitional and saving arrangement in respect of pending applications for registration.