

Bills Committee on Companies Bill

**Comparison Table for Part 18 –
Communications to and by Companies**

PURPOSE

To facilitate clause-by-clause examination of Part 18 (Communications to and by Companies) of the Companies Bill (“CB”), this paper provides a comparison table, at Annex, on the provisions in Part 18 and relevant provisions in the Companies Ordinance (Cap. 32) (“CO”) or the company laws of comparable jurisdictions, where applicable.

PART 18 OF THE CB

2. The major proposals and policy issues concerning Part 18 are set out in Annex B to LegCo Paper No. CB(1)1671/10-11(04), 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
3 February 2012**

Comparison Table for Part 18

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)

SCA: Singapore Companies Act

UKCA 2006: United Kingdom Companies Act 2006

Clause	Contents	Derivation	Position in CO	Position in CB
Division 1: Preliminary				
809	Interpretation	CO s.168BAA(1), (2) & (4)	Sets out the meaning of a number of terms and expressions used in the CO provisions relating to communications by company to another person (other than the Registrar).	Existing law plus the definition of “applicable provision” to be extended to cover provisions requiring the document or information to be sent or supplied to a company.
810	Minimum period specified for purposes of sections 816(3), 819(4) and 821(6)	CO s.168BAB	<p>(a) Provides for the minimum period of the notice of revocation in relation to an agreement between a company and another person for communication in electronic form or website communication.</p> <p>(b) The notice must be given for at least 7 days or such longer period as specified in the company’s articles (for communication sent to members), the instrument creating the debenture (for</p>	Existing law, plus provisions covering communication to company by a person who is not a company (clause 810(1)).

Clause	Contents	Derivation	Position in CO	Position in CB
			communication sent to debenture holders) or any other agreement (for communication sent to other persons), as appropriate.	
811	Period specified for purposes of sections 816(7)(a), 819(7)(a) and 821(11)(b)	CO s.168BAC	Provides that a document is deemed to have been received by a recipient 48 hours after it has been sent by electronic means or by means of website or any longer period as specified in the company's articles (for communication sent to members), the instrument creating the debenture (for communication sent to debenture holders) or any other agreement (for communication sent to other persons), as appropriate.	(a) Existing law, plus provisions covering communication to company by a person who is not a company (clause 811(1)(a)). (b) CSAs would be proposed to the effect that the 48 hours requirement would be subject to any provisions in the company's articles, the instrument creating the debenture or any other agreement. The period of 48 hours is only applicable for the default position (clause 811(2)).
812	Time specified for purposes of sections 816(7)(b), 817(5)(a),	CO s.168BAD	Provides where the document or information is sent or supplied by post, it is to be regarded as being received at the time it would be delivered in the ordinary course of	Existing law, plus provisions covering communication to company by a person who is not a company (clause 812(1)(a)).

Clause	Contents	Derivation	Position in CO	Position in CB
	819(7)(b) and 820(5)(a)		post i.e. on the following working day after posting or otherwise specified in the company's articles (for communication sent to members) or instrument creating the debenture (for communication sent to debenture holders), or any other agreement (for communication sent to other persons), whichever is the later.	
813	Address specified for purposes of sections 819(3)(b)(iii) and 820(2)(b)	CO s.168BAE	Provides that a document (in electronic form or in hard copy form) may be sent by hand or by post to an address specified by the recipient or an address as shown in the company's registers of members and debenture holders, or register of directors and secretaries as the case may be, or where the recipient is a company, to its registered office address.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
814	Effect of this Part on sending documents etc. to Registrar	<i>c.f.</i> UKCA 2006 s.1143(3)		New provision to clarify that Part 18 has effect subject to Part 2 (Registrar of Companies and Companies Register).
Division 2 : Service of Document on Company				
815	Service of document	CO s.356	Provides that a document that is issued for any legal proceedings may be served on a company by sending it by post to the company's registered office or by leaving it at that office of the company.	Existing law.
Division 3 : Other Communication to Company by Person who is not Company				
816	Communication in electronic form	<i>c.f.</i> UKCA 2006 s.1146(3) & (4) and Part 3 of Schedule 4		New provision to provide that: (a) a document may be sent to a company by a natural person in electronic form if the company has agreed or is regarded as having so agreed under a provision of the CB; (b) a company may revoke its

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>agreement by giving a notice of revocation;</p> <p>(c) a document is deemed to have been received by the company 48 hours after it has been sent by electronic means or such longer period as specified in the company's articles (for members), the instrument creating debenture (for debenture holders) or any other agreement (for other persons), as the case may be (CSAs will be proposed to modify the period of 48 hours. See Item on clause 811 above); and</p> <p>(d) a document in electronic form may be sent by post or by hand.</p>
817	Communication in hard copy form	<i>c.f.</i> UKCA 2006 s.1146(2) & (4) and Part 2 of Schedule 4		(a) New provision to provide that a document or information may be sent or supplied by hand or by post in hard copy form to a company by a natural person at an address specified by the company or the company's registered office or an

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>address authorized by the CB.</p> <p>(b) If a document or information is sent or supplied by post, it is to be regarded as being received by the company on the following working day after posting or otherwise as specified in the company's articles (for members), or instrument creating the debenture (for debenture holders) or any other agreement (for other persons), whichever is the later.</p> <p>(c) Where the document or information is sent or supplied by hand, it is regarded as being received by the company when the document is delivered.</p>
818	Communication in other forms	<i>c.f.</i> UKCA 2006 Part 4 of Schedule 4		New provision to provide that a document or information may be sent or supplied in a form or manner that has been agreed by the company other than in electronic or hard copy form.

Clause	Contents	Derivation	Position in CO	Position in CB
Division 4 : Other Communication by Company to Another Person				
819	Communication in electronic form	CO s.168BAG	<p>(a) Communications by electronic means (other than by website) can be made by a company only with the recipient's agreement and to an address specified by the recipient.</p> <p>(b) A document sent in electronic form by a company is sufficiently authenticated if the identity of the company is confirmed in a manner as specified by the recipient; or the communication contains a statement of the company's identity and the recipient has no reason to doubt the truth of that statement.</p> <p>(c) A document is regarded as being received by the recipient 48 hours after it has been sent by a company by electronic means, or any longer period as</p>	<p>Existing law, plus new provisions to provide that:</p> <p>(a) a document may be sent by a company to another company in electronic form if such other company has agreed or is regarded as having so agreed under a provision of the CB (clause 819(3)(a)(ii));</p> <p>(b) the company is to send the document by electronic means to an address so specified by such other company or regarded under a provision of the CB as having been so specified (clause 819(3)(b)(i)(B)); and</p> <p>(c) CSAs would be proposed to modify the period of 48 hours. See Item on clause 811 above.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate.</p> <p>(d) A document sent in electronic form may also be sent by hand or by post.</p> <p>(e) A recipient may revoke his/her agreement to communicate in electronic form by giving a notice of revocation.</p>	
820	Communication in hard copy form	CO s.168BAF	(a) A document may be sent by hand or by post in hard copy form to an address specified by the recipient or an address as shown in the company's registers of members and debenture holders, or register of directors and secretaries, as the case may be, or where the	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>recipient is a company, its registered office address. If the company does not have the recipient's address, the document may be sent to the recipient's last known address.</p> <p>(b) A document sent in hard copy form is sufficiently authenticated if it is signed by an officer of the company.</p> <p>(c) If a document or information is sent or supplied by a company by post to an address, it is regarded as being received by the recipient on the following working day after posting or otherwise specified in the company's articles (for members) or instrument creating the debenture (for debenture holders), or any other agreement (for other persons), whichever is the</p>	

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>later.</p> <p>(d) If the document is sent by hand, it is regarded as being received by the recipient at the time when the document is delivered.</p>	
821	Communication by means of website	CO s.168BAH	<p>(a) If permitted by: (i) a company's articles, (ii) a members' or equivalent debenture holders' resolution, (iii) an instrument creating the debenture or (iv) agreement by individual members/debenture holders, a company may communicate with its members or debenture holders by making the document or information available on a website.</p> <p>(b) Members of a company are not allowed to communicate to the company by means of</p>	<p>(a) Existing law, plus a new provision exempting from the requirement of sending notification or request for the purpose of website communication, if the recipient has not agreed to receive communication in electronic form or has not specified an electronic address and the sending of the document in hard copy form by post is returned as undeliverable at the address (clause 821(10)).</p> <p>(b) CSAs would be proposed to modify the period of 48 hours. See Item on clause 811 above.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>website.</p> <p>(c) A member or debenture holder is regarded as having agreed to website communication if he/she has not responded to the company's request for consent stating clearly the effect of a failure to respond within 28 days.</p> <p>(d) Where a member or debenture holder has not agreed to accept website communication, the company should not make the request again within a period of 12 months from the prior request.</p> <p>(e) The company must notify the recipient of the posting of the document or information on the website, the address of the website, the place on the website where it may be accessed and how to access</p>	

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			<p>the document or information.</p> <p>(f) The information posted must be in a form which enables the recipient to read and retain a copy.</p> <p>(g) A document is regarded as being received by the intended recipient 48 hours after its first posting or 48 hours after receipt of the notice of posting (whichever is the later) or any longer period as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate.</p> <p>(h) The information must be kept posted on the website for the whole of any specified period or 28 days if no period is</p>	

Clause	Contents	Derivation	Position in CO	Position in CB
			specified. (i) The recipient may revoke his/her agreement to website communication by giving a notice of revocation.	
822	Communication in other forms	<i>c.f.</i> UKCA 2006 Part 5 of Schedule 5		New provision to provide that a document or information may be sent or supplied in a form or manner that has been agreed by the recipient other than in electronic or hard copy form or by making it available on a website.
823	Joint holders of share or debentures	CO Regulation 133 of Table A of the First Schedule <i>c.f.</i> UKCA 2006 Paragraph 16 of Schedule 5	Provides that a notice may be given by the company to the joint holder first named in the register of members.	Standard provision for Table A companies now applies for companies in general, but this can still be modified by the company's own articles. The company is given the option to send each of the joint holders (subclause (2)(a)).

Clause	Contents	Derivation	Position in CO	Position in CB
824	Death or bankruptcy of holder of shares	CO Regulation 134 of Table A of the First Schedule <i>c.f.</i> UKCA 2006 Paragraph 17 of Schedule 5	Provides that the document or information is to be sent or supplied to the beneficiary or the representative of the deceased or the trustee in bankruptcy in the case of a holder of shares who is deceased or bankrupt.	Standard provision for Table A companies now applies for companies in general, but this can still be modified by the company's own articles.
825	Member or debenture holder may require hard copy	CO s.168BAI	(a) Provides that a member or debenture holder may request information to be provided in hard copy form free of charge within 28 days from the date of receipt of a document or information not in hard copy form. The company must send a hard copy of the document within 21 days of receiving the request. (b) If the document requires some action to be taken by the member or debenture holder,	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			the company must send or supply the hard copy within 7 days after the date of receiving the request.	