

Bills Committee on Companies Bill

**Comparison Table for Part 1 –
Preliminary**

PURPOSE

To facilitate clause-by-clause examination of Part 1 (Preliminary) of the Companies Bill (“CB”), this paper provides a comparison table, at Annex, on the provisions in Part 1 and relevant provisions in the Companies Ordinance (Cap. 32) (“CO”) or the company laws of comparable jurisdictions, where applicable.

PART 1 OF THE CB

2. The major proposals and policy issues concerning Part 1 are set out in Annex A to LegCo Paper No. CB(1)1671/10-11(03), which was considered by Members at the meeting of 29 March 2011. Members expressed concerns about the formulation of “responsible person”. We have subsequently provided supplementary information to Members via LegCo Paper Nos. CB(1)1879/10-11(02), CB(1)2132/10-11(02) and CB(1)2636/10-11(01).

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
10 February 2012**

Comparison Table for Part 1

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)

UKCA 2006: United Kingdom Companies Act 2006

Clause	Contents	Derivation	Position in CO	Position in CB
Division 1: Short title and commencement				
1	Short title and commencement			It provides for the short title of the Ordinance and that the Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Clause	Contents	Derivation	Position in CO	Position in CB
Division 2: Interpretation of this Ordinance: General				
2(1)	Interpretation			
	- <i>accounting transaction</i>	CO s. 344A(9)(b)	It means a transaction which is required to be entered in the books of account.	Existing law.
	- <i>articles</i>	CO s.2(1)	It means the articles of association, as originally framed or as altered by special resolution.	Existing law with modification so that a condition of an existing company's memorandum of association is regarded as a provision of the articles (see clause 93).
	- <i>associated company</i>	CO s.165(5), s.168BA	It means a company that is the company's subsidiary or holding company or a subsidiary of that company's holding company.	Existing law except that <i>related company</i> is used in s.165(5) and s.168BA.
	- <i>body corporate</i>	CO s.2(3)	It includes a company incorporated outside HK but excludes a corporation sole.	Existing law.
	- <i>certified public accountant</i>	Professional Accountants		New definition. The term has the meaning given by s.2(1) of the Professional

Clause	Contents	Derivation	Position in CO	Position in CB
	(practising)	Ordinance (Cap 50) s.2(1)		Accountants Ordinance (Cap 50).
	- commencement date			New definition. It means a date on which a provision in the CB comes into operation.
	- Companies Register	c.f. UKCA 2006 s.1080(2)		New definition. It means the records kept by the Registrar under clause 26.
	- company	CO s.2(1)	It means a company formed and registered under the CO or an existing company.	Existing law.
	- company secretary			New definition. The term is used to replace <i>secretary</i> in CO.
	- contributory	CO s.171	It means a person liable to contribute to the assets of a company in the event of winding-up and includes a person alleged to be a contributory.	Existing law except that the latter part of s.171 is removed as it is in relation to the exercise to modernize corporate insolvency law.
	- Court (note: this term is not defined in	CO s.2(1) definition of court	It means the Court of First Instance.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	<i>Chinese as it is not necessary to do so)</i>			
-	<i>court</i>			New definition. It means a court of competent jurisdiction of HKSAR and includes a magistrate.
-	<i>debenture</i>	CO s.2(1)	It includes debenture stock, bonds and other debt securities whether constituting a charge on the assets or not.	Existing law.
-	<i>director</i>	CO s.2(1)	It includes any person occupying the position of director by whatever name called.	Existing law.
-	<i>document</i>	CO s.2(1)	It includes summons, notice, order, and other legal process, and registers.	Existing law.
-	<i>electronic record</i>	CO s.2(1), Cap 553 s.2(1)	It has the meaning assigned to it by s.2(1) of the Electronic Transactions Ordinance (Cap 553).	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	- <i>existing company</i>	CO s.2(1)	It means a company formed and registered under a former Companies Ordinance.	Existing law expanded to cover companies formed and registered under CO.
	- <i>financial year</i>	c.f. UKCA 2006 s.390	It means the period in respect of which any profit and loss account of any body corporate laid before it in general meeting is made up.	The definition replaces the existing definition in s.2(1) of the CO and provides for the determination of a company's financial year: (i) in case of a company, by reference to its financial reference period; (ii) in case of an undertaking not being a company, by reference to the period that a profit and loss account is required to be made up, by its constitution or law of incorporation.
	- <i>former Companies Ordinance</i>			New definition. It means the Companies Ordinance 1865, Companies Ordinance 1911 or the CO.
	- <i>founder member</i>	CO s.2(1)	It means a person who has signed his name on a memorandum in accordance with s.4(1).	Existing law plus new provision regarding new companies to be formed under CB.
	- <i>group of</i>	CO s.2(1)	It means any 2 or more companies	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	<i>companies</i>		or bodies corporate one of which is the holding company of the other or others.	
	- <i>identity card</i>	Cap 177 s.1A(1)		New definition. It means an identity card issued under the Registration of Persons Ordinance (Cap 177).
	- <i>Index of Company Names</i>			New definition. It means the index of names kept by the Registrar under clause 28.
	- <i>information system</i>	CO s.168BAA (1), Cap 553 s.2(1)	It has the meaning given by s.2(1) of the Electronic Transactions Ordinance (Cap 553).	Existing law.
	- <i>listed company</i>	CO s.2(1)	It means a company which has any of its shares listed on a recognized stock market.	Existing law.
	- <i>listing rules</i>			New definition. It means the rules made under s.23 of the Securities and Futures Ordinance (Cap 571) by a recognized exchange company that govern the listing of securities in a stock market it operates.

Clause	Contents	Derivation	Position in CO	Position in CB
	- <i>manager</i>	CO s.2(1)	It means a person who, under the immediate authority of the board, exercises managerial functions.	Existing law.
	- <i>member</i>	CO s.28	It means a founder member and a person who agrees to become a member and whose name is entered in the register of members.	Existing law.
	- <i>non-Hong Kong company</i>	CO s.332	It means companies incorporated outside HK which has a place of business in HK.	Existing law.
	- <i>officer</i>	CO s.2(1)	The term includes a director, manager or secretary.	Existing law.
	- <i>Official Receiver</i>	CO s.2(1)	It means the Official Receiver appointed under the Bankruptcy Ordinance (Cap 6).	Existing law.
	- <i>ordinary resolution</i>	c.f. UKCA 2006 s.282		New definition. It means a resolution that is passed by a simple majority. See clause 553.

Clause	Contents	Derivation	Position in CO	Position in CB
	- <i>predecessor Ordinance</i>			New definition to refer to the CO.
	- <i>recognized exchange company</i>	CO s.2(1)	It means a company recognized under s.19(2) of the SFO as an exchange company for operating a stock market.	Existing law.
	- <i>recognized stock market</i>	CO s.2(1)	It has the same meaning as in s.1 of Part 1 of Schedule 1 to the SFO.	Existing law.
	- <i>redeemable shares</i>	CO s.49(1)	It means shares which are to be redeemed or liable to be redeemed at the option of the company or shareholder.	Existing law.
	- <i>registered non-Hong Kong company</i>			New definition for companies registered under Part 16.
	- <i>Registrar</i>	CO s.2(1)	It means the Registrar of Companies appointed by the CE.	Existing law.
	- <i>reserve</i>	CO s.2(1)	It means a person nominated as a reserve director of a private	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	<i>director</i>		company.	
	- <i>Secretary</i>			New definition. It means the Secretary for Financial Services and the Treasury.
	- <i>shadow director</i>	CO s.2(1) & (2)	It means a person in accordance with whose directions or instructions the directors or a majority of the directors are accustomed to act.	Existing law.
	- <i>share</i>	CO s.2(1)	It means share in the share capital of a company and includes stock except where a distinction between stock and share is expressed or implied.	Existing law except that the latter part about distinction between stock and share is removed.
	- <i>share warrant</i>	CO s.2(1) and s.73	It means the bearer is entitled to the shares specified in the warrant and the shares may be transferred by delivery of the warrant.	Existing law.
	- <i>special notice</i>	CO s.116C, c.f. UKCA 2006 s.312	If a provision requires special notice of a resolution, at least 28 days' notice to the company is required, and the company is	Existing law with modification –the 21 days' notice period is changed to 14 days' notice period.

Clause	Contents	Derivation	Position in CO	Position in CB
			required to give notice of the resolution to its members at the same time as the notice of the meeting, or where this is not practical, substituted notice of 21 days.	
- <i>special resolution</i>	CO s.116, c.f. UKCA 2006 s.283		A special resolution is passed by not less than 3/4 of the votes.	Existing law with modification - see clause 554.
- <i>specified form</i>	CO s.2(1) & (9)		It is defined as the appropriate form specified for the time being by the Registrar for use in relation to any purpose of the CO.	Existing law.
- <i>undertaking</i>	CO 23 rd Schedule section 1(1)		It is defined as a body corporate, partnership or an unincorporated association carrying on a trade or business.	Existing law.
- <i>unlisted company</i>	CO s.2(1)		An unlisted company is a company which does not have any of its shares listed on a recognized stock market.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	- <i>written resolution</i>	CO s.116B(1) c.f. UKCA 2006 s.296	Anything which may be done by a resolution in a general/ class meeting may be done by a written resolution signed by all the members entitled to vote at the meeting.	Existing law with modification – see clause 546.
2(2)	Reference to this Ordinance etc.			New provision to explain the references to “this Ordinance” and “a provision of the predecessor Ordinance”.
2(3)	Meaning of manager, receiver	CO s.302A	It defines “receiver or manager of the property of a company” and explains the meaning of the appointment of a receiver or manager under powers in an instrument.	Existing law.
2(4)	Document in hard copy or electronic form	CO s.168BAA(3),	It explains the meaning of “hard copy form”, “electronic form” and “electronic means”.	Existing law.
2(5)	Sending of document etc.	CO s.168BAA(2)	It explains the meaning of “sending a document” and “supplying information”.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
2(6)	Note	Cap 542 s.3(4)		New provision to provide for the effect of a note to a provision.
3	Responsible person	CO s.351(2) c.f. UKCA 2006 s.1121(3), s.1122(2) and s.1123(1)	It provides that “officer who is in default” means an officer or shadow director who knowingly and wilfully authorizes or permits the default, refusal or contravention of a provision in the CO.	<ul style="list-style-type: none"> (i) Existing law with the following new elements – <ul style="list-style-type: none"> (a) to remove “knowingly and wilfully”; (b) to include “participates in”; (c) to extend the application to an officer and shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company (clause 3(3)); and (d) to extend the application of the definition to non-Hong Kong company. (ii) The term “responsible person” replaces “officer who is in default”. (iii) Pursuant to the LegCo paper CB(1)2636/10-11(01), a Committee Stage Amendment (CSA) will be

Clause	Contents	Derivation	Position in CO	Position in CB
				introduced to delete “fails to take all reasonable steps to prevent” from the formulation of “responsible person”.
4	Certified translation	Cap 32B Regulation 6	It provides for the prescribed manner of certifying a translation.	<p>Existing law plus the following new provisions :</p> <ul style="list-style-type: none"> (i) To include translation certified as correct by a court appointed translator as a certified translation (subsections (2)(a) and (4)); and (ii) new power for the Secretary to amend the list of specified persons (clause 4(6)).
5	Dormant company	CO s.344A, s.360(5) and 16 th Schedule	It provides for the requirements for a private company to become a dormant company and the provisions from which a dormant company is exempt. It also provides for the situations when such a company ceases to be dormant. The types of companies listed in the 16 th Schedule are excluded from this provision.	<ul style="list-style-type: none"> (i) Existing law with transitional provision (clause 5(3) and (4)). Section 344A(6) of the CO is moved to clause 438(2). Section 344A(9)(b) is moved to clause 2(1). (ii) A CSA will be introduced to delete subclause 7(f). Pursuant to s.77 of Cap 29, a trust company must not be a private company. It is therefore unnecessary to include it in the list of

Clause	Contents	Derivation	Position in CO	Position in CB
				excluded companies.

Division 3: Interpretation of this Ordinance: Types of Companies

Subdivision 1: Limited Company and Unlimited Company

6	Limited company	CO s.4(2)(a) & (b)	It provides that a limited company may be either limited by shares or by guarantee.	Existing law.
7	Company limited by shares	CO s.4(2)(a)	It provides that a company limited by shares is a company having the liability of its members limited to the amount unpaid on the shares held by them.	Existing law.
8	Company limited by guarantee	CO s.4(2)(b) and (4)	It provides that a company limited by guarantee is a company having the liability of its members limited to such amount as they undertake to contribute to the assets of the company in the event of winding-up.	(i) Existing law with clarification that a company limited by guarantee does not have a share capital. Clause 8(2) is added to makes it clear that a company limited by guarantee and having a share capital formed under the CO before 13 February 2004 (i.e. the date when such type of company can no longer be formed under s.4(4) of the CO), will be regarded as a guarantee company under

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>CB although it has a share capital.</p> <p>(ii) It should be noted that companies limited by guarantee now form a category separate from private or public companies.</p>
9	Unlimited company	CO s.4(2)(c)	<p>It provides that an unlimited company is a company not having any limit on the liability of its members.</p>	Existing law.
Subdivision 2: Private Company and Public Company				
10	Private company	CO s.29	<p>It provides that a private company is a company which restricts the right to transfer its shares, limits the number of members to 50 and prohibits invitation to the public to subscribe for its shares or debentures.</p>	<p>Existing law plus clarification that a company limited by guarantee is not a private company (clause 10(1)(b)).</p>
11	Public company			<p>New definition to specify that a public company is not a private company or a company limited by guarantee.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
Division 4: Interpretation of this Ordinance: Holding Company and Subsidiary, and Parent Undertaking and Subsidiary Undertaking				
12	Holding company	CO s.2(4) & (5)	It provides for the meaning of a “subsidiary” and how the term “controls the composition of the board of directors” shall be construed.	Existing law.
13	Provisions supplementary to section 12	CO s.2(6)	It explains how shares held or power exercisable by others will be treated for the purposes of determining whether a company is a subsidiary of another.	Existing law.
14	Subsidiary	CO s.2(7)	It provides that reference to the “holding company” of another company is read as a reference to a company of which that other company is a subsidiary.	Existing law.
15 and Schedule 1	Parent undertaking, parent company and subsidiary	CO s.2B(1) & 23 rd Schedule	It provides for the meaning of “parent company”, “parent undertaking” and “subsidiary undertaking”	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	undertaking			
Division 5: Application of this Ordinance				
16	Application to existing company	CO s.307	It provides for the application of the CO to existing companies.	Existing law.
17	Application to unlimited company registered in pursuance of former Companies Ordinance as limited company	CO s.309	It provides for the application of the CO to an unlimited company registered as a limited company under the Companies Ordinance 1911.	Existing law with modification so that the CB would apply to an unlimited company registered as a limited company in pursuance of the CO.
18	Application to company registered, but not formed, under former Companies Ordinance	CO s.308	It provides for the application of the CO to a company registered but not formed under the Companies Ordinance 1865 or the Companies Ordinance 1911.	Existing law with modification so that the CB would apply to a company registered but not formed under the CO.

Clause	Contents	Derivation	Position in CO	Position in CB
Schedule 1 : Parent Undertakings and Subsidiary Undertakings				
1	Interpretation			
	- <i>shares</i>	CO 23 rd Schedule s.1(1)	It provides for the interpretation of “shares” in relation to undertaking that – (i) has share capital; (ii) has capital in a form other than share capital; or (iii) not having any capital.	Existing law.
2	Parent undertaking	CO 23 rd Schedule ss.2(1) & (2), 3 to 5	It provides for the interpretation of “parent undertaking”. The concept is similar to that of “holding company”, with provisions to cater for the situation where the undertaking is not a body corporate.	Existing law.
3	Provisions supplementary to section 2 of this Schedule	CO 23 rd Schedule ss.6 to 9		
4	Parent company	CO 23 rd Schedule s.1(1)	It provides that a parent company means a parent undertaking which is a company.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
5	Subsidiary undertaking	CO 23 rd Schedule s.2(3)	It provides that an undertaking shall be treated as the parent undertaking of another undertaking if a subsidiary undertaking of the first-mentioned undertaking is the parent undertaking of that other undertaking.	Existing law.

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