

Bills Committee on Companies Bill

**Subsidiary Legislation to be made
under the Companies Bill before its Commencement**

PURPOSE

----- In response to Members' request, this paper provides a list, at Annex, of the subsidiary legislation to be made under the Companies Bill ("CB") before its commencement.

SUBSIDIARY LEGISLATION

2. The Companies Bill provides for subsidiary legislation to be made to mainly deal with administrative, technical or procedural matters so as to facilitate future updates. Brief descriptions of the nature and contents of the subsidiary legislation to be made before the Companies Bill comes into operation are set out in the list at Annex. It should be noted that the contents of the subsidiary legislation are subject to changes and fine-tuning in the course of drafting.

3. We aim to introduce the subsidiary legislation to the Legislative Council in late 2012 or early 2013. Subject to Legislative Council's scrutiny, the subsidiary legislation will commence operation together with the Companies Bill.

ADVICE SOUGHT

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

**Financial Services and the Treasury Bureau
Companies Registry
27 February 2012**

Subsidiary legislation to be made under the Companies Bill before its commencement

No.	Empowering provisions in the Companies Bill (“CB”)	Relevant provisions in the Companies Ordinance (“CO”)	Brief description of the subsidiary legislation to be made
1	Clause 25	Section 304 and the Eighth Schedule	<ul style="list-style-type: none"> • The Financial Secretary may make regulations pursuant to clause 25(1) to require payment to the Registrar of fees in respect of – <ul style="list-style-type: none"> (a) the performance of any of the Registrar’s functions; or (b) the provision of services or facilities connected with the performance of functions. • The regulations may – <ul style="list-style-type: none"> (a) provide for the amount of the fees to be fixed by or determined under the regulations; (b) provide for different fees to be payable in respect of the same matter in different circumstances; and (c) specify when and how fees are to be paid. • The fees payable would include those in relation to the registration of documents, inspection of documents, granting of licences and other miscellaneous fees.

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2	Clauses 47, 53, 648 and new provisions to be introduced through Committee Stage Amendments (“CSAs”) ¹	N/A	<ul style="list-style-type: none"> • The Financial Secretary may make regulations to prescribe – <ul style="list-style-type: none"> (a) the information to be contained in an application under clause 47(1) for withholding a residential address or a full identification number, as well as the documents and fees to accompany such an application; and (b) the entities to whom the protected or withheld residential addresses and full identification numbers may be disclosed under clause 53(4) and the new provisions to be introduced through CSAs, the conditions for the disclosure and the fees payable. It is envisaged that the entities would at least include – <ul style="list-style-type: none"> (i) the individual to whom the information relates and other persons authorised by him; (ii) the members of the relevant company; (iii) relevant government bureau and departments, as well as other relevant regulators; and (iv) a liquidator or a provisional liquidator. • The regulations would also prescribe the manner in which residential addresses and full identification numbers should be withheld for companies intending to withhold the information contained in its registers of directors and company secretaries from inspection

¹ CSAs will be introduced to add new provisions to provide for disclosure of the information withheld pursuant to clause 47 similar to the provisions under clauses 53 and 54.

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			pursuant to clauses 635 and 642.
3	Clause 73	Tables A , C, D and E of the First Schedule	<ul style="list-style-type: none"> • The Financial Secretary may prescribe model articles for companies. It is envisaged that there will be model articles for public companies limited by shares, private companies limited by shares and companies limited by guarantee. A company may adopt as its articles any or all of the provisions of the model articles. On the incorporation of a limited company, the model articles that are prescribed for the type of company to which the company belongs, so far as applicable, form part of the company’s articles if the company’s articles do not exclude or modify the model articles. • It is envisaged that the model articles for public companies limited by shares would be similar in scope to the current Table A and there would be suitable modifications, including those for clearer layout and drafting. The model articles for private companies limited by shares would be considerably simpler, reflecting how small companies operate. • Unlike the current Tables C and D which only provide the forms of the memorandum and articles of association of a company limited by guarantee, the model articles would be comprehensive in scope. However, they will be simple and concise taking into account the fact that most of the companies limited by guarantee in Hong Kong are small to medium in size.

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4	Clause 96	Section 22B and the Companies (Specification of Names) Order (Cap. 32E)	The Financial Secretary may specify any word or expression, to the effect that a company must not be registered by a name containing those words or expressions without prior approval of the Registrar of Companies. This subsidiary legislation would serve the same function as the current Companies (Specification of Names) Order.
5	Clause 355	N/A	<ul style="list-style-type: none"> • The Financial Secretary may make regulations – <ul style="list-style-type: none"> (a) prescribing places at which copies of instruments creating charges and a register of charges are to be kept by a registered non-Hong Kong company under clauses 350 and 352. It is envisaged that a registered non-Hong Kong company may keep those copies and the register at its principal place of business in Hong Kong or another place in Hong Kong; (b) providing for the obligations of a registered non-Hong Kong company to keep the copies and the register available for inspection under clause 354(2). The regulations would prescribe the notice required from the person who would like to inspect the records. Given the required notice, a registered non-Hong Kong company would be required to allow for the person to inspect and make copies of the records; and (c) prescribing the fees payable by persons who are not members of the company for inspection of the copies and the register under clause 354. • This subsidiary legislation would mirror the one relating to company records for Hong Kong companies to be made under Part 12 (see item 11 below).

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6	Clause 441	Section 141E and Companies (Revision of Accounts and Reports) Regulation (Cap. 32N)	<ul style="list-style-type: none"> • The Financial Secretary may make regulations providing for the application of the CB in relation to the financial statements, summary financial report or directors’ report (“the reports”) that has been revised under clause 440. The regulations may, among others, – <ul style="list-style-type: none"> (a) make different provisions depending on how the reports have been revised; (b) provide for the functions of the auditors in relation to the revised reports; and (c) require the company to take certain steps if the reports have been laid before the company in general meeting or sent to members before the revision. • It is envisaged that the regulations would be derived from the current requirements under the Companies (Revision of Accounts and Reports) Regulation (Cap. 32N) with suitable modifications. Among others, the regulations would require – <ul style="list-style-type: none"> (a) that the revised reports must contain statements on the revision in a prominent position; (b) that the auditor has to make a report on the revised financial statements; and (c) that the revised reports and audit reports must be laid at a general meeting and/ or sent to members, and forwarded to the Registrar of Companies within a prescribed period after the revision.
7	Clause 443	Section 129D	<ul style="list-style-type: none"> • The Financial Secretary may make regulations – <ul style="list-style-type: none"> (a) prescribing information that is required to be contained in a directors’ report under clause 380(1) and (2); and

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			<p>(b) prescribing other requirements for a directors’ report.</p> <ul style="list-style-type: none"> • It is envisaged that the regulations would be derived from the current requirements under section 129D of the CO with suitable modifications. Among others, the directors’ report in respect of a financial year would be required to include – <ul style="list-style-type: none"> (a) a statement explaining the effect of the arrangements to which the company or other relevant companies are parties the object of which is to enable directors of the company to acquire benefits by means of the acquisition of shares in the company or any other body corporate; (b) the amount of donations of not less than \$10,000 made for charitable or other purposes by the company and its subsidiaries (companies falling within the reporting exemption under Part 9 would be exempted from this requirement); (c) the details of shares issued by the company and equity linked arrangements entered into by the company; (d) the amount of dividend (companies falling within the reporting exemption under Part 9 would be exempted from this requirement); and (e) if any director has resigned on grounds of his disagreement with the management of the company, the reasons he has given to the company (companies falling within the reporting exemption under Part 9 would be exempted from this requirement).
8	Clause 443	Section 161(1), 161B(1) to (7), (11) & (17),	<ul style="list-style-type: none"> • The Financial Secretary may make regulations – <ul style="list-style-type: none"> (a) prescribing information that is required to be contained in the notes to any financial

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		161BB(1), and 161C(1), (2A) & (3)	<p>statements under section 378(1); and</p> <p>(b) prescribing other requirements for notes to any financial statements.</p> <ul style="list-style-type: none"> • It is envisaged that the regulations would focus on information in relation to the benefits of directors and would be derived from the current requirements under sections 161, 161A, 161B and 161BB of the CO with suitable modifications. Among others, the notes to the financial statements of a company would be required to include information on – <ul style="list-style-type: none"> (a) directors’ emoluments; (b) for listed companies, benefits in respect of share options or shares; (c) retirement benefits in excess of the directors’ entitlements; (d) payment for loss of office ; and (e) transactions entered into by the company and its subsidiaries which are restricted under Part 11 (including loans, quasi-loans, credit transactions, etc. in favour of the directors and their connected entities) or similar transactions in which the directors or their connected entities have material interest.
9	Clause 443	Sections 141CB, 141CF and Companies (Summary Financial Reports for Listed	<ul style="list-style-type: none"> • The Financial Secretary may make regulations – <ul style="list-style-type: none"> (a) prescribing information that is required to be contained in a summary financial report under clause 430(2); (b) prescribing other requirements for a summary financial report; and

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		Companies) Regulation (Cap. 32M)	<p>(c) providing for the form and contents of notifications given by the company to members under clause 433(2) and the notice of intent given by members to the company in relation to summary financial report.</p> <ul style="list-style-type: none"> • It is envisaged that the regulations would be derived from the current requirements under the Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32M) of the CO with suitable modifications. Among others, the summary financial reports must be derived from the reporting documents of the company to which it relates and must contain the following information in relation to the company – <ul style="list-style-type: none"> (a) the information and particulars included in the company’s statement of financial position and statement of comprehensive income; (b) the information required to be contained in the directors’ report; (c) relevant auditor’s statements and opinion (e.g. the statement that the financial statements have not been properly prepared, that the financial statements are not consistent with the directors’ report, etc.); (d) important events which occur after the end of the financial year that may affect the company ; and (e) any other information necessary to ensure that the report is consistent with the reporting documents for the financial year in question. • It is also envisaged that the regulations would set out the technical requirements on the form and contents of notifications given by the company to members and potential members under clause 433(2) in relation to summary financial report. For example, the regulations would

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			require that the notification must make it clear that the members may request the company to send them the full reporting documents or, instead, the summary financial reports. The notice of intent has to be postage prepaid if sent to an address in Hong Kong.
10	Clause 443	N/A	<ul style="list-style-type: none"> • The Financial Secretary may make regulations prescribing a body for the purposes of section 376(8)(a). The reference to “accounting standards” in the CB means the statements of standard accounting practice issued by that body. It is envisaged that the body would be the Hong Kong Institute of Certified Public Accountants.
11	Clause 648	N/A	<ul style="list-style-type: none"> • The Financial Secretary may make regulations to provide for the obligations of a company that is required by the CB to keep, make available for inspection and provide copies of any company records. The regulations may – <ul style="list-style-type: none"> (a) prescribe places for the keeping of company records. It is envisaged that a company may keep the records at its registered office or a place in Hong Kong; (b) make provision as to the inspection and copying of the company records. The regulations would prescribe the notice required from the person who would like to inspect the records. Given the required notice, a company would be required to allow the person to inspect and make hard or electronic copies of the records; and (c) prescribe the fees payable for inspection of company records by persons who are not members of the company and for making copies of the records.
12	Clauses 650 and	Section 93	<ul style="list-style-type: none"> • The Financial Secretary may make regulations to require companies –

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	651		<p>(a) to display prescribed information in prescribed locations. Among others, a company has to display its name outside of its registered office and other places of business;</p> <p>(b) to state prescribed information in prescribed descriptions of documents or communications. Among others, a company has to display its name on its website and also its registration number in its business letters and official publications. For companies with limited liability, “Limited” should be added to its name (unless exempted); and</p> <p>(c) to provide prescribed information on request to those they deal with in the course of their business. The information would include the addresses of the registered office and places where company records are kept, and the types of records kept.</p>
13	Clause 716	Sections 168A, 296 and Companies (Winding-up) Rules (Cap. 32H)	<p>The Chief Justice may make rules for regulating unfair prejudice proceedings. It is envisaged that the rules may –</p> <p>(a) prescribe the form, contents and manner of the presentation, service and return of petition as well as the advertisement of the order; and</p> <p>(b) prescribe fees or empower the Court to fix fees.</p>
14	Clauses 792 and 793	Sections 333, 333B, 334, 335, 336, 359A(1) and Companies (Revision of Accounts and	<ul style="list-style-type: none"> • The Financial Secretary may make regulations in relation to the revision of accounts by a registered non-Hong Kong company. It is envisaged that the regulations would be derived from the requirements under section 20 and 21 of the Companies (Revision of Accounts and Reports) Regulation (Cap 32N). • The Financial Secretary may also make regulations prescribing the particular and

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		Reports) Regulation (Cap. 32N)	<p>accompanying documents in an application, notification and return under Part 16. It is envisaged that the regulations would be derived from the requirements under sections 333, 333B, 334, 335 and 336 of the CO with suitable modifications.</p> <ul style="list-style-type: none"> • The Financial Secretary may also make regulations providing that an application under section 764(2) or (3), or a return under section 766(2), may contain a certified translation of a domestic name of the non-Hong Kong company; and providing for the procedures and requirements for the purpose. It is envisaged that the requirements will be derived from the current practice and procedure as set out in Companies Registry External circular No.1/2001.