

Bills Committee on Companies Bill

Follow-up actions for the meeting held on 10 February 2012 in relation to Part 18 of the Companies Bill

Purpose

This paper sets out the Administration's response to the issues raised by Members at the Bills Committee meetings on 10 February 2012 relating to Part 18 (Communications to and by Companies) of the Companies Bill ("CB").

Administration's response

Clause 812 (Time specified for purposes of sections 816(7)(b), 817(5)(a), 819(7)(b) and 820(5)(a))

2. Members sought clarification on the meaning of "the time at which the document or information would be delivered in the ordinary course of post". In view of Members' queries, we propose to add a subclause to clause 812 clarifying that "the time at which the document or information would be delivered in the ordinary course of post" refers to the second working day after posting. This aligns with the Practice Direction issued by the High Court in respect of delivery in the case of ordinary post under the relevant rules of court governing proceedings in the High Court, District Court, Lands Tribunal and Family Court. It should be noted that the deemed receipt of the document or information by post will be rebuttable where the contrary is proved.

Clauses 816 (Communication in electronic form) and 819 (Communication in electronic form)

3. Members were concerned that, while clause 816(7) and clause 819(7) provided for deemed receipt of a document or information, the document or information might not actually be received. In view of Members' concern, we will introduce Committee Stage Amendments ("CSAs") to the clauses to provide that the deemed receipt of the document or information in electronic form will be rebuttable where the

contrary is proved.

Divisions 3 (Other Communication to Company by Person who is not Company) and 4 (Other Communication by Company to Another Person)

4. Members asked whether Divisions 3 and 4 could be combined into one single division. In this regard, Division 3 governs communications to a company by natural person whereas Division 4 governs communications by a company to other companies and natural persons. The relevant provisions have to be divided into two Divisions as the communication rules are not the same. For example, only a company is entitled to send or supply document or information by means of the company's website. Combining the two set of rules in one single Division will impede the readability of the provisions. In addition, from the reader's point of view, it would be convenient if the rules are set out according to the sender's status. In most cases, it would be the senders who would be most concerned as they are the ones who have to comply with the relevant requirements.

Clause 820 (Communication in hard copy form)

5. In response to Members' queries, it is confirmed that an address can be a post office box number under clause 820.

Clause 821 (Communication by means of website)

6. Members asked, if a member or debenture holder of a company had not received a notification from the company under clause 821(3)(c), whether he would be regarded as having received the document or information posted on the website. Members also asked whether a member or debenture holder of a company who had not received the company's request under clause 821(4)(b) or 821(5)(b) would be regarded as having agreed that the company could send document or information to him by means of website.

7. Under clause 821(11)(b), the document or information posted on a website would be regarded as received by a member or debenture holder at the end of the period specified in section 811 after the document is first made available on the website and he receives a notification under clause 821(3)(c), whichever the later. If a notification is required to be

sent, and the member or debenture holder can prove that he has not received the notification, then the person would not be regarded as having received the document or information on the website. We consider that there is no need to amend the provision in this regard.

8. As for requests under clause 821(4)(b) or 821(5)(b), a member or debenture holder of a company would be regarded as having agreed to receiving document or information by means of website if he does not respond to the company's request (if required) within 28 days from the date on which the request is sent. It may be argued that, under the current formulation, even if the member or debenture holder has not received the request and therefore cannot respond to it, he may still be regarded as having agreed at the end of the specified period. Taking into account Members' views, we will introduce a CSA that the deemed agreement will be rebuttable if it is proved that the member or debenture holder has not received the request sent by the company.

Clause 823 (Joint holders of shares or debentures)

9. Members questioned whether clause 823 should apply to existing companies whose articles did not provide for the matter. In this regard, it is our intention for clause 823 to apply in the absence of any provision in the company's articles on the matter. Where the requirements as provided for in the company's articles are different, the articles will prevail. If an existing company has not adopted Article 133 of Table A and does not wish the provisions in clause 823 to apply to it, it may provide otherwise in the company's articles.

Clause 824 (Death or bankruptcy of holder of shares)

10. Members suggested that the scope of the clause should be expanded to cover a holder of shares who was mentally incapacitated. In this regard, we note that, upon death or bankruptcy, the personal representative or trustee in bankruptcy are entitled to the shares of the deceased/bankrupt. The shares concerned are transmitted by operation of law in such situations. However, the situation of a patient becoming mentally incapacitated seems to be different as there is no such transmission of shares by operation of law. Any dealing with the property of the mentally incapacitated person may require sanction by the Court (sections 10A and 10B of Mental Health Ordinance (Cap 136) ("MHO")) and the appointment of a committee (sections 11 and 12 of

MHO). In view of the different situations, we do not propose to expand the scope of clause 824 to cover a holder of shares who is mentally incapacitated.

**Financial Services and the Treasury Bureau
Companies Registry
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