

Bills Committee on Companies Bill

Use of Notes in the Companies Bill

The Administration has been requested to prepare a paper to –

- (a) list the clauses of the Bill in which notes are used;
- (b) divide these clauses into appropriate categories; and
- (c) give an explanation on the intended effect of notes in these clauses.

Clauses of Bill in which notes are used and appropriate categories

2. As explained in the note on Modernisation of Drafting annexed to the paper on Overall Policies of the Companies Ordinance Rewrite submitted by the Administration to the Bills Committee on 7 March 2011¹, the notes included in the Bill are intended to serve as aids to comprehension for the general reader. The Bill includes a total of 37 notes the purposes of which can be classified into 3 broad categories, namely –

- (a) to draw readers' attention to other relevant provisions of the Bill (25 notes fall within this category);
- (b) to provide readers with factual information which is available elsewhere (5 notes fall within this category); and
- (c) to provide examples of the situations in which the relevant clause applies or illustrate how it will work in practice (7 notes fall within this category).

3. Set out in the **Annex** is a table listing the clauses of the Bill in which notes are used and their purpose.

¹ LC Paper No. CB(1)1522/10-11(02).

Intended effect of notes

4. Members may wish to refer the following extract from the paper on Modernisation of Drafting mentioned above –

“6. Clause 2(6) of the Bill states that a note is provided for information only and has no legislative effect. In other words, the notes are not intended to have a legal effect in the same way as a section of an Ordinance. Clause 2(6) is similar to section 2(5) of the existing Arbitration Ordinance (Cap. 341) (which is being replaced by a new Ordinance) and section 3(4) of the Legislative Council Ordinance (Cap. 542).

7. The wording used in Clause 2(6) and in the provisions noted above, in particular the words “has no legislative effect”, derive from the wording used in section 18(3) of the Interpretation and General Clauses Ordinance (Cap. 1), which provides that “[a] marginal note or section heading to any provision of any Ordinance *shall not have any legislative effect* and shall not in any way vary, limit or extend the interpretation of any Ordinance”. The rule in section 18(3) has been interpreted generally as meaning that a court is not entitled to have regard to the marginal notes or section headings for the purpose of ascertaining the meaning of an Ordinance. In other words, marginal notes and section headings are not to be used to resolve any purported ambiguities in the text. Clause 2(6) of the Bill is intended to achieve the same effect but the wording is expressed in more modern terms. By stating that the notes “are provided for information only”, the legislative purpose of the notes is made abundantly clear: they are provided only for the information of the reader and serve no other purpose. They are not intended to have any other effect, whether legal or otherwise.”

**Law Drafting Division
Department of Justice
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List of clauses in which notes are used and their purpose

	Clause	Purpose of note
Part 1		
	2 (definition of <i>articles</i>)	draw readers' attention to other provisions in the Bill
Part 4		
	130(2)	draw readers' attention to other provisions in the Bill
	133	draw readers' attention to other provisions in the Bill
	155(1)	provide example
	162(3)	draw readers' attention to other provisions in the Bill
	165(3)	draw readers' attention to other provisions in the Bill
	166(4)	draw readers' attention to other provisions in the Bill
	169(1)	draw readers' attention to other provisions in the Bill
	175(2)	provide example
	183(2)	provide example
Part 5		
	198(1) (definition of <i>distributable profits</i>)	draw readers' attention to other provisions in the Bill
	205(1)	provide example
	207(3)	provide example
	218(1)	draw readers' attention to other

	Clause	Purpose of note
		provisions in the Bill
	219(1)	draw readers' attention to other provisions in the Bill
	220(1)	draw readers' attention to other provisions in the Bill
	225(1)	draw readers' attention to other provisions in the Bill
	231(3)	draw readers' attention to other provisions in the Bill
	237	draw readers' attention to other provisions in the Bill
	253(2)	draw readers' attention to other provisions in the Bill
	261(1)	draw readers' attention to other provisions in the Bill
	266(2)	draw readers' attention to other provisions in the Bill
	272	draw readers' attention to other provisions in the Bill
	279(5)	draw readers' attention to other provisions in the Bill
	280(2)	draw readers' attention to other provisions in the Bill
	281(4)	draw readers' attention to other provisions in the Bill
	285(1)	draw readers' attention to other provisions in the Bill
Part 8		
	346(4)	provide example

	Clause	Purpose of note
Part 9		
	420(1)	draw readers' attention to other provisions in the Bill
Part 11		
	534(1)	draw readers' attention to other provisions in the Bill
Part 13		
	710(4)	draw readers' attention to other provisions in the Bill
Schedules		
	Schedule 10, clause 15	provide readers with factual information which is available elsewhere (commencement date)
	Schedule 10, clause 27(2)	provide example
	Schedule 10, clause 34(2)	provide readers with factual information which is available elsewhere (brief content of statutory provision referred to)
	Schedule 10, clause 39(1)	provide readers with factual information which is available elsewhere (commencement date)
	Schedule 10, clause 45	provide readers with factual information which is available elsewhere (commencement date)
	Schedule 10, clause 46	provide readers with factual information which is available elsewhere (commencement date)