

**Bills Committee on Companies Bill**  
**Committee Stage Amendments to the Companies Bill**  
**Part 14 – Remedies for Protection of Companies’ or Members’ Interests**

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 14 (“Remedies for Protection of Companies’ or Members’ Interests”) (clauses 711 to 731) of the Companies Bill (CB). In preparing the CSAs, the Administration has taken account of, *inter alia*, the views of Members, deputations and the Legislative Council Legal Adviser. Marked-up copy of the proposed CSAs in numerical order is at **Annex** for reference. The marked-up Chinese provisions in the Annex only contain CSAs solely applicable to the Chinese text. CSAs to Schedule 10 (“Transitional and Saving Provisions”) will be reported to the Bills Committee later in one go.

A list of abbreviations used in this table is as follows:

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

LegCo: Legislative Council

| Item                                | Relevant matter/<br>provision | Proposed<br>Committee Stage Amendment  | Remarks   |
|-------------------------------------|-------------------------------|--|---|
| <b>General amendments across CB</b> |                               |  |   |
| 1                                   | Change “14 days” to “15 days” | Where a document has to be delivered to the Registrar within “14 days”, the time limit should be changed to “15 days”. | <ul style="list-style-type: none"> <li>• Some Bills Committee Members were concerned that the 14-day period may be insufficient for companies to deliver certain documents to the Registrar for registration or notification, as the delivery period for some of the documents was 15 days in CO.</li> <li>• Having reviewed the relevant provisions in CB, the Administration agreed to extend the 14-day period to 15 days across the board. Please see paragraphs 31 to 32 of LegCo Paper No. CB(1)357/11-12(01) “<i>Administration’s response to issues</i>”</li> </ul> |

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|---|--|---|--|
|   |  |   | <p><i>raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5”.</i></p> <ul style="list-style-type: none"> <li>• Insofar as Part 14 is concerned, we propose to amend clause 715 pursuant to this item.</li> </ul>  |
| <b>Other amendments specific to Part 14</b> |  |   |  |
| 2   | Clause 712<br>Interpretation   | In the Chinese version of sub-clause (1)(b), replace “如此” with “在無遺囑的情況下”.                                    | <ul style="list-style-type: none"> <li>• This CSA is proposed for clarity in response to LegCo Legal Adviser’s comment.</li> </ul>   |
| 3   | Clause 720<br>Interpretation   | In the Chinese version, replace “失責” with “的錯失”.  | <ul style="list-style-type: none"> <li>• This CSA is proposed for consistency with clause 717 in response to LegCo Legal Adviser’s comment.</li> </ul>   |
| 4   | Clause 721<br>Member of company or of associated company may bring or intervene in proceedings | Replace “Court” in subclause (1) with “court”.  | <ul style="list-style-type: none"> <li>• As explained in paragraphs 11 and 12 of LegCo Paper No. CB(1)1295/11-12(01) <i>Follow-up actions for the meeting held on 13 January 2012 in relation to Part 14 of the Companies Bill</i>, the proceedings that a member may bring after leave is granted by the Court of First Instance should not be limited to proceedings in the Court of First Instance only. The amendment enables proceedings to be brought in any court of competent jurisdiction.</li> </ul> |
| 5   | Clause 728<br>Interpretation   | Adding definition for “document (文件)” and amend the definition of “record (紀錄)” with reference to clause 826. | <ul style="list-style-type: none"> <li>• As mentioned in paragraph 15 of LegCo Paper No. CB(1)1295/11-12(01) <i>Follow-up actions for the meeting held on 13 January 2012 in relation to Part 14 of the Companies Bill</i>, we have reviewed the definition of “record (紀錄)” with a view to ensuring that it covers electronic record. For consistency, we propose to adopt the definitions of “document (文件)” and “record (紀錄)” in clause 826.</li> </ul>   |

| Item | Relevant matter/<br>provision                           | Proposed<br>Committee Stage Amendment  | Remarks   |
|------|---|--|---|
|      |   |  | Consequentially, “document” is added to relevant provisions in clauses 729 to 731.  |
| 6    | Clause 729<br><br>Court may order inspection of records | (I) Add “or document” after “record”.  | <ul style="list-style-type: none"> <li>• Please see item 5 above.</li> </ul>  |
|      |   | (II) Add “or, if the person is not the applicant, the applicant” after “the person” in subclause (4)(d).   | <ul style="list-style-type: none"> <li>• The CSA is proposed to expressly state the Court’s power to make an order permitting the applicants who are not the person inspecting the records to disclose the information to any other person.</li> </ul>  |
|      |   | (III) Delete “or document” after “information” in subclause (4)(d).  | <ul style="list-style-type: none"> <li>• This is a drafting change. “Information” should be wide enough to cover “document”.</li> </ul>   |
|      |   | (IV) Delete subclause (6)(b).  | <ul style="list-style-type: none"> <li>• Following the abolition of par value, provisions that set out a threshold based on the paid up amount on shares held by a member should also be deleted. In a no par environment, even shares in the same class can be issued at different prices but they should still have the same rights. The effect of subclause (6)(b) is that different shares in the same class can effectively carry different rights depending on the original issue price of the shares, and is therefore inconsistent with the no-par regime.</li> </ul> |
|      |   | (V) Replace “不少於” with “最少” in subclause (6)(a) of the Chinese version.  | <ul style="list-style-type: none"> <li>• This CSA is proposed for consistency with subclause (6)(c) in response to LegCo Legal Adviser’s comment. Similar amendments will be made to clause 329(2)(b)(i) and (4).</li> </ul>  |
| 7    | Section 730<br><br>Preservation of secrecy              | (I) Split subclause (1) into subclauses (1) and (1A) and differentiate between the person authorised to inspect a record and the members who applied to the Court for inspection, i.e. the applicants. | <ul style="list-style-type: none"> <li>• The CSA seeks to expressly state that the person who inspected the record may disclose the information to the applicants. In addition, as mentioned in paragraph 18 of LegCo Paper No. CB(1)1295/11-12(01) <i>Follow-up actions for the meeting held on 13 January 2012 in relation to Part 14 of the Companies Bill</i>, this CSA also seeks to clarify that both the applicants and the person who inspect the records would be bound by the clause.</li> </ul>  |

| Item | Relevant matter/<br>provision                   | Proposed<br>Committee Stage Amendment  | Remarks  |
|------|---|--|--|
|      |   | (II) Delete “or document” after “information” in subclauses (1A), (2) and (3). | <ul style="list-style-type: none"> <li>• Please see item 6(III) above.</li> </ul>  |
|      |   | (III) Add “or document” after “record” in subclauses (1) and (3).              | <ul style="list-style-type: none"> <li>• Please see item 5 above.</li> </ul>   |
|      |   | (IV) Replace “another” with “a” in subclause (1A).                             | <ul style="list-style-type: none"> <li>• This is a drafting change.</li> </ul>   |
| 8    | Section 731<br><br>Legal professional privilege | Add “or document” after “record”.  | <ul style="list-style-type: none"> <li>• Please see item 5 above.</li> </ul>   |
| 9    | Section 731A<br><br>Protection of personal data | This is a new clause.  | <ul style="list-style-type: none"> <li>• As mentioned in paragraph 14 of LegCo Paper No. CB(1)1295/11-12(01) <i>Follow-up actions for the meeting held on 13 January 2012 in relation to Part 14 of the Companies Bill</i>, for the avoidance of doubt, this new clause restates section 152FE of the CO (nothing in the provisions shall authorise the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap 486)).</li> </ul> |

**712. 釋義**

- (1) 凡 —
- (a) 某人在緊接去世前，是某公司成員，則在本分部中，提述公司成員，包括該人的遺產代理人；及
  - (b) 某人在緊接去世前，是某公司成員，則在本分部中，提述公司成員，包括憑藉該人的遺囑或因該人在無遺囑的情況下去世而成為該公司的股份的受託人，或憑藉該遺囑或因該人如此在無遺囑的情況下<sup>1</sup>去世而享有該公司股份的實益權益的人。
- (2) 凡某人在緊接去世前，是某公司的前度成員，則在本分部中，提述公司的前度成員，包括該人的遺產代理人。
- (3) 就本分部而言，除非某人符合以下說明，否則該人不是某公司的前度成員 —
- (a) 該人曾經是該公司成員，但已不再是該公司成員；及
  - (b) 該人在 2005 年 7 月 15 日或之後，不再是該公司成員。

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<sup>1</sup> Item 2 / 第 2 項

**715. Alteration of articles by order of Court**

- (1) This section applies if a company's articles are altered by an order under section 714.
- (2) The alteration has the same effect, and this Ordinance applies to the articles, as if the alteration were made by a resolution of the company.
- (3) Despite anything in this Ordinance, the company has no power, without the leave of the Court, to alter the articles in a way that is inconsistent with the order.
- (4) Within 154<sup>2</sup> days after the order is made, the company must deliver an office copy of the order to the Registrar for registration.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

720. 釋義

在本分部中 —

**不當行為** (misconduct)指欺詐、疏忽或違反責任，亦指在遵從任何條例或法律規則方面**失責的錯失**<sup>3</sup>；

**法律程序** (proceedings)指任何在法院司法管轄權範圍內的法律程序，但刑事法律程序除外。

**721. Member of company or of associated company may bring or intervene in proceedings**

- (1) If misconduct is committed against a company, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, bring proceedings in respect of the misconduct before the ~~court~~<sup>Court</sup><sup>4</sup> on behalf of the company.
- (2) If, because of misconduct committed against the company, a company fails to bring proceedings in respect of any matter, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, bring proceedings in respect of the matter before the court on behalf of the company.
- (3) If, because of misconduct committed against the company, a company fails to diligently continue, discontinue or defend proceedings, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, intervene in the proceedings before the court for the purpose of continuing, discontinuing or defending those proceedings on behalf of the company.
- (4) The cause of action in relation to the proceedings under subsection (1) or (2) is vested in the company. Any of those proceedings must be brought in the name of, and the relief (if any) must be sought on behalf of, the company.
- (5) The right to continue, discontinue or defend any proceedings intervened in under subsection (3) is vested in, and the relief (if any) must be sought on behalf of, the company.
- (6) Subject to section 725, this Division does not affect any common law right of a member of a company, or a member of an associated company of a company, to bring proceedings on behalf of the company, or intervene in any proceedings to which the company is a party.
- (7) This section does not prevent a member of a company, or of an associated company of a company, from bringing proceedings in respect of the company, or intervening in any proceedings to which the company is a party, on the member's own behalf in respect of any personal right.



**728. Interpretation**

In this Division—

*document* (文件) has the meaning given by section 826(1);

*record* (紀錄) ~~includes books and paper.~~ has the meaning given by section 826(1).<sup>5</sup>

**729. Court may order inspection of records**

- (1) On application by a required number of a company's members, the Court may make an order—
  - (a) authorizing a person who is the applicant or one of the applicants to inspect any record or documents<sup>6</sup> of the company; or
  - (b) authorizing a person who is not the applicant or one of the applicants to inspect any record or documents<sup>6</sup> of the company on behalf of the applicant or applicants.
- (2) The Court may make an order authorizing a person to inspect a records or document<sup>6</sup> if it is satisfied that—
  - (a) the application is made in good faith; and
  - (b) the inspection is for a proper purpose.
- (3) If the Court makes an order authorizing a person to inspect a record or documents<sup>6</sup>, the person may, unless the Court otherwise orders, make copies of the record or documents<sup>6</sup>.
- (4) If the Court makes an order authorizing a person to inspect a record or documents<sup>6</sup>, it may make any other order that it thinks fit, including—
  - (a) an order requiring the company, or an officer of the company, to produce any record or documents<sup>6</sup> to the person;
  - (b) an order specifying the record or documents<sup>6</sup> that may be inspected by the person;
  - (c) an order requiring the applicant to pay the expenses reasonably incurred by the company in the inspection; and
  - (d) an order permitting the person or, if the person is not the applicant, the applicant<sup>7</sup> to disclose any information ~~or document~~<sup>8</sup> obtained as a result of the inspection to any other person specified in the order.
- (5) A person who complies with an order made under subsection (1) or (4) does not incur any civil liability by reason only of the compliance.
- (6) In this section, a reference to a required number of a company's members is a reference to—
  - (a) the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application; or
  - ~~(b) the number of members that holds shares in the company on which there has been paid up an aggregate sum of at least \$100,000; or~~<sup>9</sup>
  - (c) at least 5 members of the company.

<sup>6</sup> Item 6(I) / 第 6(I)項

<sup>7</sup> Item 6(II) / 第 6(II)項

<sup>8</sup> Item 6(III) / 第 6(III)項

<sup>9</sup> Item 6(IV) / 第 6(IV)項

729. 原訟法庭可命令查閱紀錄

- (1) 原訟法庭可應某公司達到所需數目的成員的申請，作出命令 —
  - (a) 授權申請人或(如有多於一名申請人)其中一名申請人查閱該公司的任何紀錄；或
  - (b) 授權並非申請人的人或(如有多於一名申請人)並非其中一名申請人的人，代表該申請人或該等申請人查閱該公司的任何紀錄。
- (2) 原訟法庭如信納 —
  - (a) 有關申請是真誠提出的；及
  - (b) 查閱有關紀錄是為正當目的而進行的，則可作出上述命令，授權某人查閱該等紀錄。
- (3) 如原訟法庭作出上述命令，授權某人查閱有關紀錄，該人可複製該等紀錄，但如原訟法庭另有命令則除外。
- (4) 如原訟法庭作出上述命令，授權某人查閱有關紀錄，它可作出它認為合適的任何其他命令，包括 —
  - (a) 規定有關公司或其高級人員向該人出示任何紀錄的命令；
  - (b) 指明該人可查閱的紀錄的命令；
  - (c) 規定申請人支付有關公司因該項查閱而合理地招致的開支的命令；及
  - (d) 准許該人向命令指明的任何其他人士披露因該項查閱而取得的任何資料或文件的命令。
- (5) 遵從根據第(1)或(4)款作出的命令的人，不會僅因遵從該命令而負上任何民事法律責任。
- (6) 在本條中，提述某公司達到所需數目的成員，即提述 —
  - (a) 於有關申請的日期當日，代表全體有權在該公司成員大會上表決的成員的表決權不少於最少<sup>10</sup>2.5%的數目的成員；
  - (b) 持有該公司已繳付股款的股份而所繳總額不少於\$100,000 的數目的成員；或(*Note: This subclause is proposed to be deleted. See the English version of Clause 729 above. 註：本款建議刪除。見上文英文版第729條*)
  - (c) 最少5名該公司的成員。

**730. Preservation of secrecy**

- (1) If, on application by one or more members of a company, the Court makes an order under section 729(1) authorizing a person to inspect a record or documents<sup>11</sup>, the person may disclose any information obtained as a result of the inspection to a person who is an applicant.
- (1A) The authorized person, or the applicant to whom the information was disclosed,<sup>12</sup> must not, without the company's prior consent in writing, disclose any information ~~or document~~<sup>13</sup> obtained as a result of the inspection to ~~another~~<sup>14</sup> person who is not an applicant.
- (2) Despite subsection (1A), the authorized person, or the applicant to whom the information was disclosed,<sup>12</sup> may disclose such information ~~or document~~<sup>13</sup> to another person if the disclosure is—
- required with a view to the institution of, or otherwise for the purpose of, any criminal proceedings;
  - permitted in accordance with an order made under section 729(1) or (4); or
  - permitted in accordance with law or a requirement made under law.
- (3) If the Court makes an order under section 729(1) authorizing a person to inspect a records or document<sup>11</sup> the person, or the applicant to whom the information was disclosed<sup>12</sup> must not, unless the Court otherwise orders, use any information ~~or document~~<sup>13</sup> obtained as a result of the inspection for any purpose other than the purpose for which the inspection is applied for.
- (4) A person who contravenes subsection (1A) or (3) commits an offence and is liable—
- on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
  - on summary conviction to a fine at level 5 and to imprisonment for 6 months.

<sup>11</sup> Item 7(III) / 第 7(III)項

<sup>12</sup> Item 7(I) / 第 7(I)項

<sup>13</sup> Item 7(II) / 第 7(II)項

<sup>14</sup> Item 7(IV) / 第 7(IV)項

**731. Legal professional privilege**

Section 729, or an order made under it, does not authorize a person to inspect any record or documents<sup>15</sup> containing information that is subject to legal professional privilege.

**731A. Protection of personal data**

To avoid doubt, sections 729 and 730, or an order made under section 729, do not authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).<sup>16</sup>