

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 1 – Preliminary

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 1 (“Preliminary”) (clauses 1 to 18 and Schedule 1) 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.

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

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CSA: Committee Stage Amendment

LegCo: Legislative Council

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
1	Clause 2 Interpretation	(I) Amend the definition of “financial year (財政年度)” as “ financial year (財政年度) — see section 363, in relation to a company, means a financial year of the company determined in accordance with Division 3 of Part 9 ”	<ul style="list-style-type: none"> The CSA is proposed in response to LegCo Legal Adviser’s concerns on signpost definitions. The revised definition would point to the whole Division 3 of Part 9 which is relevant for the determination of the financial year of a company under the CB.
		(II) In the definition of “predecessor Ordinance (《前身條例》)”, change “section 1” to “section 2”.	<ul style="list-style-type: none"> The CSA is necessary following an amendment to Schedule 9.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		(III) Delete the definition of “special notice (特別通知)”.	<ul style="list-style-type: none"> The CSA is proposed in response to LegCo Legal Adviser’s concerns on signpost definitions. Instead of including a signpost in clause 2, we consider it more appropriate to add a note in the provision that requires the giving of “special notice” (i.e. clauses 391, 394, 410 and 453) to draw reader’s attention to clause 568.
		(IV) Delete the definition of “undertaking (企業)”.	<ul style="list-style-type: none"> The term “undertaking” has a different meaning in different clauses in the CB, therefore a universally applicable definition for “undertaking” in clause 2 is not appropriate. “Undertaking” will be defined in Schedule 1 for the purpose of that Schedule. We will also review the use of “undertaking” in other clauses (e.g. clause 513, please see paragraph 23 of LegCo Paper No. CB(1)1490/11-12(01) “<i>Follow-up actions for the meetings held on 2 and 9 December 2011 in relation to Part 11 of the Companies Bill</i>”).
		(V) Amend the definition of “written resolution (書面決議)” as “ written resolution (書面決議)— see section 546 <u>Subdivision 2 of Division 1 of Part 12.</u> ”	<ul style="list-style-type: none"> The CSA is proposed in response to LegCo Legal Adviser’s concerns on signpost definitions. The revised definition would point to the whole Subdivision 2 of Division 1 of Part 12 which is relevant for written resolutions.
2	Clause 3 Responsible person	Remove “fails to take all reasonable steps to prevent” in the formulation of “responsible person”.	<ul style="list-style-type: none"> This CSA is proposed in response to Members’ concern at the Bills Committee meetings that the limb of “fails to take all reasonable steps to prevent” a contravention or failure in the new formulation of “responsible person” would cover officers, especially those Independent Non Executive Directors who were not aware of any possible breach by the company, or directors of small and medium-sized enterprises who were simply negligent and whose resources and legal knowledge were usually limited. Please refer to paragraphs 2 to 9 of LC Paper No. CB(1)2636/10-11(01) “<i>Administration’s response to issues raised by members at the meeting on 13 May</i>”

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<i>2011 in relation to the formulation of “responsible person” under Part I”.</i>
3	Clause 5 Dormant company	Delete the reference to trust company from clause 5(7) (subclause (7)(f)).	<ul style="list-style-type: none"> As explained in the Annex to LegCo Paper No. CB(1)1052/11-12(04) “<i>Comparison Table for Part I – Preliminary</i>”, pursuant to section 77 of the Trustee Ordinance (Cap 29), a trust company must not be a private company. It is therefore unnecessary to include it in the list of excluded companies.
4	Clause 15 Parent undertaking, parent company and subsidiary undertaking	Delete the reference to parent company.	<ul style="list-style-type: none"> This CSA is proposed because the term “parent company” is not used in the CB.
5	Section 1 of Schedule 1 Interpretation	(I) Amend section 1(c)(i) as “..., or <u>giving rise to a liability to contribute to the losses, ...</u> ”	<ul style="list-style-type: none"> This CSA is proposed in response to Legal Adviser’s comment. It is a drafting change to align the wordings in section 1(c)(i) and (ii).
		(II) Add a definition for “undertaking (企業)”.	<ul style="list-style-type: none"> Please see item 1(IV) above.
6	Section 2 of Schedule 1 Parent undertaking	In section 2(2), replace “the constitution, or an equivalent constitutional document, of” with “any document constituting or regulating”.	<ul style="list-style-type: none"> This is a drafting change and is proposed for clarity in response to the LegCo Legal Adviser’s suggestion.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
7	Section 4 of Schedule 1 Parent company	Delete the section.	<ul style="list-style-type: none"> <li data-bbox="1032 296 2092 328">• The CSA is proposed because the term “parent company” is not used in the CB.

Financial Services and the Treasury Bureau
Companies Registry
13 April 2012

2. Interpretation

(1) In this Ordinance—

accounting transaction (會計交易), in relation to a company, means a transaction that is required by section 369 to be entered in the company's accounting records, excluding a transaction arising from the payment of any fee that the company is required by an Ordinance to pay;

articles (章程細則), in relation to a company, means the articles of association of the company;

Note—

Please also see section 93. A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles.

associated company (有聯繫公司), in relation to a body corporate, means—

- (a) a subsidiary of the body corporate;
- (b) a holding company of the body corporate; or
- (c) a subsidiary of such a holding company;

body corporate (法人團體)—

- (a) includes—
 - (i) a company; and
 - (ii) a company incorporated outside Hong Kong; but
- (b) excludes a corporation sole;

certified public accountant (practising) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

commencement date (生效日期), in relation to any provision of this Ordinance, means the date on which that provision comes into operation;

Companies Register (公司登記冊) means the records kept under section 26;

company (公司) means—

- (a) a company formed and registered under this Ordinance; or
- (b) an existing company;

company secretary (公司秘書) includes any person occupying the position of company secretary (by whatever name called);

contributory (分擔人), in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up;

Court means the Court of First Instance;

court (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate;

debenture (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company;

director (董事) includes any person occupying the position of director (by whatever name called);

document (文件) includes—

- (a) a summons, notice, order and any other legal process; and
- (b) a register;

electronic record (電子紀錄) means a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

existing company (原有公司) means a company formed and registered under a former Companies Ordinance;

financial year (財政年度)—~~see section 363, in relation to a company, means a financial year of the company determined in accordance with Division 3 of Part 9~~¹;

former Companies Ordinance (《舊有公司條例》) means—

- (a) the Companies Ordinance 1865 (1 of 1865);
- (b) the Companies Ordinance 1911 (58 of 1911); or
- (c) the predecessor Ordinance;

founder member (創辦成員)—

- (a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company's articles for the purposes of section 62(1)(a); or
- (b) in relation to an existing company, means a person who subscribed to or signed on the company's memorandum of association;

group of companies (公司集團) means any 2 or more bodies corporate one of which is the holding company of the other or others;

identity card (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

Index of Company Names (《公司名稱索引》) means the index of names kept under section 28;

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

listed company (上市公司) means a company that has any of its shares listed on a recognized stock market;

listing rules (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates;

manager (經理), in relation to a company—

- (a) means a person who performs managerial functions in relation to the company under the directors' immediate authority; but
- (b) excludes—
 - (i) a receiver or manager of the company's property; and
 - (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

member (成員), in relation to a company, means—

- (a) a founder member of the company; or
- (b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members;

non-Hong Kong company (非香港公司) means a company incorporated outside Hong Kong that—

- (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16; or
- (b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date;

officer (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate;

Official Receiver (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);

ordinary resolution (普通決議)—see section 553;

predecessor Ordinance (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section ~~24~~² of Schedule 9;

¹ Item 1(I) / 第 1(I)項

² Item 1(II) / 第 1(II)項

recognized exchange company (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market;

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

redeemable shares (可贖回股份) means shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder;

registered non-Hong Kong company (註冊非香港公司) means a non-Hong Kong company that is registered in the Companies Register as a registered non-Hong Kong company;

Registrar (處長) means the Registrar of Companies appointed under section 20(1);

reserve director (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 446(1);

Secretary (局長) means the Secretary for Financial Services and the Treasury;

shadow director (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;

share (股份)—

- (a) means a share in a company's share capital; and
- (b) if any of the company's shares is converted into stock, includes stock;

share warrant (股份權證) means a warrant—

- (a) stating that the bearer is entitled to the shares specified in the warrant; and
- (b) enabling the shares to be transferred by delivery of the warrant;

~~**special notice** (特別通知)—see section 568;³~~

~~**special resolution** (特別決議)—see section 554;~~

specified form (指明格式) means the form specified under section 22;

~~**undertaking** (企業) means—~~

- ~~(a) a body corporate;~~
- ~~(b) a partnership; or~~
- ~~(c) an unincorporated association carrying on a trade or business, whether for profit or not;⁴~~

unlisted company (非上市公司) means a company that does not have any of its shares listed on a recognized stock market;

~~**written resolution** (書面決議)—see section 546Subdivision 2 of Division 1 of Part 12⁵.~~

(2) In this Ordinance—

- (a) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance; and
- (b) a reference to a provision of the predecessor Ordinance, except in Part 21 and Schedule 10, includes the provision, or such part of the provision, having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) In this Ordinance—

- (a) a reference to a manager of the property of a body corporate includes a manager of part of that property;
- (b) a reference to a receiver of the property of a body corporate includes—
 - (i) a receiver of part of that property; and
 - (ii) a receiver of the income arising from that property or part of that property; and

³ Item 1(III) / 第 1(III)項

⁴ Item 1(IV) / 第 1(IV)項

⁵ Item 1(V) / 第 1(V)項

- (c) a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—
 - (i) an appointment made under powers conferred by an Ordinance; and
 - (ii) an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.
- (4) For the purposes of this Ordinance—
 - (a) a document or information is sent or supplied in hard copy form if it is sent or supplied—
 - (i) in paper form; or
 - (ii) in a similar form capable of being read;
 - (b) a document or information is sent or supplied in electronic form if it is sent or supplied—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.
- (5) In subsection (4)—
 - (a) a reference to sending a document—
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but
 - (ii) excludes serving the document; and
 - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.
- (6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.

3. Responsible person

- (1) This section applies—
 - (a) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is—
 - (i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or
 - (ii) a failure to comply with a requirement, direction, condition or order; or
 - (b) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.
- (2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person—
 - (a) is an officer or shadow director of the company or non-Hong Kong company; and
 - (b) authorizes, ~~or~~ permits, or, participates in, ~~or fails to take all reasonable steps to prevent~~,⁶ the contravention or failure.
- (3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if—
 - (a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;
 - (b) the body corporate authorizes, ~~or~~ permits, or, participates in, ~~or fails to take all reasonable steps to prevent~~,⁷ the contravention or failure; and
 - (c) the person authorizes, ~~or~~ permits, or, participates in, ~~or fails to take all reasonable steps to prevent~~,⁸ the contravention or failure.

⁶ Item 2 / 第 2 項

⁷ Item 2 / 第 2 項

⁸ Item 2 / 第 2 項

5. Dormant company

- (1) If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution.
- (2) The special resolution specified for the purposes of subsection (1) is one—
 - (a) declaring that the qualified private company will become dormant as from—
 - (i) the date of delivery of that resolution to the Registrar; or
 - (ii) any later date that is specified in that resolution; and
 - (b) authorizing the directors to deliver that resolution to the Registrar for registration.
- (3) If—
 - (a) before the repeal of section 344A of the predecessor Ordinance by section 900, a company passed a special resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and
 - (b) the resolution is delivered to the Registrar for registration after the repeal,the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution.
- (4) If, immediately before the repeal of section 344A of the predecessor Ordinance by section 900, a company was a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date of this section.
- (5) A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if—
 - (a) the company passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar for registration; or
 - (b) there is an accounting transaction in relation to the company.
- (6) In this section—

qualified private company (合資格私人公司) means a private company that is not a company specified in subsection (7).
- (7) A company specified for the purposes of the definition of **qualified private company** in subsection (6) is—
 - (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);
 - (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);
 - (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;
 - (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);
 - (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
 - ~~(f) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);~~⁹
 - (g) a company having a subsidiary that falls within paragraph (a), (b), (c), (d) ~~or~~ (e) ~~or~~ (f)¹⁰; or
 - (h) a company that fell within paragraph (a), (b), (c), (d), (e), ~~(f)~~⁷ or (g) at any time during the 5 years immediately before the special resolution is passed.

⁹ Item 3 / 第 3 項

¹⁰ Item 3 / 第 3 項

(8) The Financial Secretary may, by notice published in the Gazette, amend subsection (7).

15. Parent undertaking, ~~parent company~~¹¹ and subsidiary undertaking

A reference in this Ordinance to a parent undertaking, ~~parent company~~¹² or subsidiary undertaking is to be construed in accordance with Schedule 1.

¹¹ Item 4 / 第 4 項

¹² Item 4 / 第 4 項

Schedule 1

1. Interpretation

In this Schedule—

shares (股份)—

- (a) in relation to an undertaking having a share capital, means the allotted shares;
- (b) in relation to an undertaking having capital in a form other than share capital, means the right to share in the capital of the undertaking; or
- (c) in relation to an undertaking not having any capital, means—
 - (i) the interest giving a right to share in the profits, or giving rise to a¹³ liability to contribute to the losses, of the undertaking; or
 - (ii) the interest giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of its being wound up;¹⁴

undertaking (企業) means—

(a) a body corporate;

(b) a partnership; or

(c) an unincorporated association carrying on a trade or business, whether for profit or not.¹⁴

¹³ Item 5(I) / 第 5(I)項

¹⁴ Item 5(II) / 第 5(II)項

2. Parent undertaking

- (1) For the purposes of this Ordinance, an undertaking is a parent undertaking of another undertaking if—
 - (a) where both undertakings are bodies corporate, it is a holding company of that other undertaking; or
 - (b) in any other case—
 - (i) it holds a majority of the voting rights in that other undertaking;
 - (ii) it is a member of that other undertaking and has the right to appoint or remove a majority of that other undertaking's board of directors; or
 - (iii) it is a member of that other undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that other undertaking.
- (2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of—
 - (a) the provisions contained in ~~the any constitution, or an equivalent constitutional document, of document constituting or regulating~~¹⁵ that other undertaking; or
 - (b) a contract in writing that—
 - (i) is of a kind authorized by ~~the any constitution, or an equivalent constitutional document, of document constituting or regulating~~¹⁶ that other undertaking; and
 - (ii) is permitted by the law under which that other undertaking is established.
- (3) In subsection (1)(b), a reference to the voting rights in an undertaking is—
 - (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or
 - (b) in the case of an undertaking not having a share capital—
 - (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or
 - (ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.
- (4) For the purposes of subsection (1)(b), an undertaking is a member of another undertaking if—
 - (a) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or
 - (b) any of its subsidiary undertakings is a member of that other undertaking.
- (5) For the purposes of subsection (1)(b)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.
- (6) For the purposes of subsection (5)—
 - (a) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and
 - (b) an undertaking has the right to appoint a director if—
 - (i) it necessarily follows from a person's appointment as a director of the undertaking that the person is appointed as a director of that other undertaking; or
 - (ii) the directorship is held by the undertaking itself.

¹⁵ Item 6 / 第 6 項

¹⁶ Item 6 / 第 6 項

- (7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless—
- (a) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and
 - (b) that other undertaking's directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking's benefit.

~~4. Parent company~~

~~For the purposes of this Ordinance, a parent company is a parent undertaking that is a company.~~¹⁷

¹⁷ Item 7 / 第 7 項