

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 7 – Debentures

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 7 (“Debentures”) (clauses 303 to 330) of the Companies Bill. 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

LDD: Law Drafting Division of Department of Justice

LegCo: Legislative Council

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across the CB			
1	Change “14 days” to “15 days” for delivery of documents to the Registrar	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"> • 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. • Upon review, the Administration agreed to extend the 14-day period to 15 days for the relevant provisions in CB. Please see paragraphs 31 to 32 of LegCo Paper No. CB(1)357/11-12(01) “<i>Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5</i>”.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<ul style="list-style-type: none"> Insofar as Part 7 is concerned, we propose to amend clauses 305(2) and (3), 309(2) and (3) and 312(3) pursuant to this item.
Other amendments specific to Part 7			
2	Clause 306 Right to inspect and request copy	Remove clause 306(8).	<ul style="list-style-type: none"> This CSA is proposed in response to Members' suggestion at the Bills Committee meeting on 11 November 2011. Members considered that clause 306(8) might not be necessary given that clause 306(7) has already provided the Court with a wide discretion to make an order. Please see paragraphs 9 of LegCo Paper No. CB(1)744/11-12(01) "<i>Administration's response to issues raised by members at the meeting on 11 November 2011 in relation to Part 7</i>".
3	Clause 310 Keeping of branch register	(I) In clause 310(1), amend "...of debenture holders (in this section called <i>the principal register</i>)" to "...of debenture holders (in this section called <i>the principal register</i>)". (II) Amend clause 310(3) by adding a time frame of 15 days such that a company that keeps a branch register: (a) must cause to be kept where the company's principal register is kept a duplicate of the branch register; and	<ul style="list-style-type: none"> Pursuant to the LDD's drafting convention, there is no need to add "in this section called" for a tag-definition. This CSA is proposed in response to Members' views at the Bills Committee meeting on 11 November 2011. Clause 310(6) creates an offence if a company contravenes clause 310(3). Members considered that clause 310(3) was uncertain as it did not set out a clear timeframe for compliance. Upon review, we propose to introduce a timeframe of 15 days after the entry is made in the branch register for compliance.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		(b) must within 15 days after an entry is made in the branch register: (i) transmit to its registered office a copy of the entry; and (ii) update the duplicate branch register.	<ul style="list-style-type: none"> • Please see paragraphs 10 and 11 of LegCo Paper No. CB(1)744/11-12(01) “Administration’s response to issues raised by members at the meeting on 11 November 2011 in relation to Part 7”.
4	Clause 319 Certification of transfer	Amend “...或債權股證有所有權的陳述。” in clause 319(1)(b) to “...或債權股證 <u>具</u> 有所有權的陳述。”.	<ul style="list-style-type: none"> • This CSA is proposed in response to LegCo Legal Adviser’s suggestion to improve drafting.
5	Clause 322 Evidence of grant of probate etc.	Amend “就債權證的轉讓或債權證的權利...” in clause 322 to “就債權證的轉讓或 <u>獲得</u> 債權證的權利...”.	<ul style="list-style-type: none"> • This CSA is proposed to achieve consistency with the Chinese rendition of “right to debentures” (獲得債權證的權利) in clause 317(2) and the Chinese rendition of “right to shares” (獲得股份的權利) in other Parts of CB (e.g. clause 145). • CSAs are also proposed to clauses 153(1), 155(2) and 156 to change the Chinese rendition of “right to shares” from “股份的權利” or “股份權利” to “<u>獲得</u>股份的權利”.
6	Clause 324 Perpetual debentures	Amend “...並不僅因該條件...” in clause 324(1) to “...並不會 <u>僅</u> 因該條件...”.	<ul style="list-style-type: none"> • This CSA is proposed in response to LegCo Legal Adviser’s comment on a similar Chinese expression in clause 207(2) to avoid ambiguities.
7	Clause 325	Add a new clause 325(5A), amend clause	<ul style="list-style-type: none"> • The purpose of clause 325(4), (5), (6) and (7) is to restate section 77(5) of CO.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Power to reissue redeemed debentures	325(6) and delete clause 325(7) to restate the position in section 77(5) of CO.	<ul style="list-style-type: none"> • Under section 77(5) of CO, the company is required to pay the proper stamp duty and penalty if the person lending money on the security of a re-issued debenture seeks to give the debentures in evidence in enforcement proceedings and that person does not have notice that the debenture was not duly stamped. • Under clause 325(7), the stamp duty and penalty payable under the Stamp Duty Ordinance (Cap 117) in respect of any debenture reissued are to be paid by the company. This appears to be exceeding the scope of the company's liability under the section 77(5) proviso in CO. • To restate the CO position, with this CSA, the obligation of the company to pay stamp duty under this provision (currently under clause 325(7)) will only apply in the event of the lender giving the debenture in evidence and where the lender did not have notice or was not negligent (currently under clause 325(6)).
8	Clause 329 Liability of trustees for debenture holders	Amend “不少於” in clause 329(2)(b)(i) and (4) to “最少”.	<ul style="list-style-type: none"> • This CSA is proposed in response to the LegCo Legal Adviser's observation. Legal Adviser noted that “at least” is rendered as “最少” in clause 729(6)(c) but as “不少於” in clause 729(6)(a). Upon review, we agree to adopt “最少” for the expression “at least” in CB as far as appropriate for the sake of consistency.
9	Clause 330 Immunity of trustees for debenture holders	Remove clause 330.	<ul style="list-style-type: none"> • This CSA is proposed in response to Members' queries at the Bills Committee meeting on 11 November 2011. • Members queried why the trustee should not be liable for negligent acts or omissions if he acts in accordance with the directions given in a meeting of debenture holders called under clause 328. • Upon review, we agree that trustees so acted in a meeting under clause 328 should be treated in the same manner as those in a meetings called in accordance with the provisions of the trust deed or debenture. Accordingly, clause 330 should be removed.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<ul style="list-style-type: none"> • Please see paragraphs 21 to 23 of the LegCo Paper No. CB(1)744/11-12(01) “Administration’s response to issues raised by members at the meeting on 11 November 2011 in relation to Part 7”.

Other relevant matters

For clause 313 (“Return of allotment”), the LegCo Legal Adviser suggested amending “...而第(1)款在猶如提述一個月是提述該延長的限期的情況下具有效力。” in the Chinese text of clause 313(6) to “...而第(1)款具有效力在，猶如提述一個月是提述該延長的限期的情況下具有效力。” Upon review, we consider that the existing drafting is clear enough and thus we do not propose CSA in that regard.

Financial Services and the Treasury Bureau
Companies Registry
27 April 2012

305. Place where register must be kept available for inspection

- (1) A company must keep its register of debenture holders available for inspection at—
 - (a) the company's registered office; or
 - (b) a place prescribed by regulations made under section 648.
- (2) A company must notify the Registrar of the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 154¹ days after the register is first kept at that place.
- (3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register of debenture holders is kept. The notice must be in the specified form and delivered to the Registrar for registration within 154² days after the change.
- (4) Subsection (2) does not apply in relation to a register of debenture holders that, since it came into existence on or after the commencement date of this Division, has been kept at the company's registered office at all times.
- (5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

¹ Item 1/第 1 項

² Item 1/第 1 項

306. Right to inspect and request copy

- (1) Except when the register of debenture holders of a company is closed under section 308, the register must be open to inspection—
 - (a) by any person who is registered in the register as a debenture holder of the company, without charge;
 - (b) by any member of the company, without charge; and
 - (c) by any other person, on payment of a prescribed fee.
- (2) A person is entitled, on request and on payment of a prescribed fee, to be provided with a copy of—
 - (a) the register of debenture holders of a company; or
 - (b) any part of the register.
- (3) A debenture holder of a company or the trustee for all debenture holders of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of any trust deed or any other document securing the issue of the debentures.
- (4) If a person makes a request under subsection (2) or (3), the company must provide the copy to the person within the prescribed period after it receives the request and prescribed fee.
- (5) When a person inspects the register, or the company provides a person with a copy of the register or any part of it, the company must inform the person of the most recent date (if any) on which alterations were made to the register.
- (6) If a company contravenes subsection (4) or (5), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

(7) If a company contravenes subsection (4), the Court may by order direct that the copy be provided to the person requesting it.

~~(8) The Court must not make an order under subsection (7) if it is satisfied that the rights given by subsection (2) or (3) (as the case may be) are being abused.³~~

(9) In this section—

prescribed (訂明) means prescribed by regulations made under section 648.

³ Item 2 / 第 2 項

309. Branch register of debenture holders

- (1) If a company issues in a place outside Hong Kong a series of debentures, or any debenture stock, that are not transferable by delivery, the company may, if it is authorized to do so by its articles, cause to be kept there a branch register of the holders of the debentures or debenture stock who are resident there.
- (2) A company that begins to keep a branch register must deliver to the Registrar for registration a notice in the specified form within 15⁴ days after doing so, stating the address where the branch register is kept.
- (3) A company that keeps a branch register must deliver to the Registrar for registration a notice in the specified form of any change in the address where the branch register is kept, within 15⁵ days after the change.
- (4) If a company contravenes subsection (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

⁴ Item 1 / 第 1 項

⁵ Item 1 / 第 1 項

310. Keeping of branch register

- (1) A branch register must be kept in the same manner in which the company's register of debenture holders (~~in this section called~~⁶ *the principal register*) is by this Ordinance required to be kept.
- (2) A company that keeps a branch register may close it in the same manner in which the principal register may be closed under section 308 except that the advertisement mentioned in that section must be inserted in a newspaper circulating generally in the place in which the branch register is kept.
- (3) A company that keeps a branch register—
 - (a) ~~must cause to be kept at the place where the company's principal register is kept a duplicate of the branch register; and must transmit to its registered office a copy of every entry made in the branch register as soon as possible after it is made; and~~
 - (b) ~~must, within 15 days after an entry is made in the branch register—~~
 - ~~(i) transmit to its registered office a copy of the entry;~~
~~and~~
 - ~~(ii) update the duplicate of the branch register.~~

~~must cause to be kept at the place where the company's principal register is kept a duplicate of the branch register entered up from time to time.~~⁷
- (4) A duplicate of a branch register is to be regarded for all the purposes of this Ordinance as part of the principal register.

⁶ Item 3(I) / 第 3(I) 項

⁷ Item 3(II) / 第 3(II) 項

- (5) Subject to the provisions of this Ordinance, a company may by its articles make any provision that it thinks fit respecting the keeping of branch registers.
- (6) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

312. Discontinuance of branch register

- (1) A company may discontinue a branch register.
- (2) If a company discontinues a branch register, all the entries in that register must be transferred to—
 - (a) some other branch register kept in the same place outside Hong Kong by the company; or
 - (b) the company's register of debenture holders.
- (3) If a company discontinues a branch register, it must, within 154⁸ days after the discontinuance, deliver to the Registrar for registration a notice in the specified form informing the Registrar of—
 - (a) the discontinuance; and
 - (b) the register to which the entries have been transferred.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

⁸ Item 1 / 第 1 項

319. 轉讓的證明

- (1) 公司對其債權證或債權股證的轉讓文書作出的證明 —
 - (a) 是由該公司向基於信賴該證明而行事的人作出的一項陳述，其內容為該公司已獲出示文件，而該等文件證明該等債權證或債權股證的所有權屬於在該轉讓文書內列名的出讓人；及
 - (b) 並非一項內容為該出讓人對該等債權證或債權股證⁹有所有權的陳述。
- (2) 如某人基於對某公司疏忽地作出的虛假證明的信賴而行事，該公司對該人的法律責任，與猶如該項證明是欺詐地作出該公司便須負上的法律責任一樣。
- (3) 就本條而言，如轉讓文書載有 —
 - (a) “certificate lodged”字樣，或具有相同意思的英文或中文文字；及
 - (b) 由具有實際或表面權限代表公司證明轉讓的人，在該等文字下方或旁邊作出的簽署或簡簽，則該轉讓文書即屬經該公司證明。
- (4) 除非相反證明成立，否則 —
 - (a) 如第(3)(b)款所述的轉讓文書所載的簽署或簡簽，看來是某人的簽署或簡簽，該簽署或簡簽須視為該人的簽署或簡簽；而
 - (b) 該簽署或簡簽須視為由該人加於該轉讓文書上，或由具有實際或表面權限為代表有關公司證明轉讓而使用該簽署或簡簽的另一人，加於該轉讓文書上。

⁹ Item 4 / 第 4 項

322. 遺囑認證書批給等的證據

就債權證的轉讓或獲得¹⁰債權證的權利的傳轉而言，如有文件向公司出示，而在法律上，該文件是某死者的遺囑認證書或某死者的遺產管理書的批給的充分證明，則該公司須接受該文件為該項批給的充分證據。

¹⁰ Item 5 / 第 5 項

324. 永久債權證

- (1) 即使衡平法有任何相反規定，載於任何債權證內的條件，或載於保證任何債權證的發行的契據內的條件，**並不會**¹¹僅因該條件使該等債權證符合以下說明而無效 —
- (a) 不可贖回；
 - (b) 只可在有某事件發生時贖回(不論該事件發生的可能性有多低)；或
 - (c) 只可在某段期限屆滿時贖回(不論該段期限有多長)。
- (2) 第(1)款適用於在任何時間發行的債權證，及在任何時間簽立的契據。

¹¹ Item 6 / 第 6 項

325. Power to reissue redeemed debentures

- (1) This section applies if a company has, whether before, on or after the commencement date of this section, redeemed any debentures previously issued.
- (2) A company has, and is to be regarded as always having had, the power to reissue redeemed debentures, either by reissuing the same debentures or by issuing new debentures in their place, unless—
 - (a) a provision to the contrary (express or implied) is contained in the company's articles or any contract made by the company; or
 - (b) the company has, by passing a resolution to that effect or by any other act, manifested its intention that the debentures are to be cancelled.
- (3) On a reissue of any redeemed debentures, a person entitled to the debentures has, and is to be regarded as always having had, the same priorities as if the debentures had never been redeemed.
- (4) A reissue of redeemed debentures, whether before, on or after the commencement date of this section—
 - (a) is to be regarded as an issue of new debentures for the purposes of stamp duty; and
 - (b) is not to be regarded as an issue of new debentures for the purposes of any provision limiting the amount or number of debentures to be issued.
- (5) A person lending money on the security of any debentures reissued under this section that appear to be stamped may give the debentures in evidence in any proceedings for enforcing the person's security.

~~(5A) If a person gives the debentures in evidence in any proceedings for enforcing the person's security under subsection (5), the stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of the reissue of the debentures are to be paid by the company.¹²~~

(6) Subsections (5) and (5A) does¹³ not apply if the person had notice or, but for the person's negligence, might have discovered that the debentures were not stamped.

~~(7) The stamp duty and penalty payable under the Stamp Duty Ordinance (Cap. 117) in respect of any debentures reissued under this section are to be paid by the company.¹⁴~~

(8) If any debentures redeemed before 1 July 1933 are reissued on or after that date, the reissue does not prejudice, and is to be regarded as never having prejudiced, any right or priority that a person would have had under or by virtue of any mortgage or charge created before that date.

¹² Item 7 / 第 7 項

¹³ Item 7 / 第 7 項

¹⁴ Item 7 / 第 7 項

329. 受託人對債權證持有人的法律責任

(1) 載於 —

- (a) 保證債權證的發行的信託契據內的任何條文；或
- (b) 與以信託契據保證的債權證的持有人訂立的合約內的任何條文，

在下述範圍內屬無效：在顧及該信託契據中授予受託人權力、權限或酌情決定權的條文後，(a)或(b)段所述條文，會豁免該受託人因未有表現出該受託人身為受託人所須有的謹慎及努力以致違反信託而須負有的法律責任；或會就因上述情況違反信託而須負有的法律責任，彌償該受託人。

(2) 第(1)款 —

- (a) 不會使符合以下說明的責任解除書失效：就受託人在該責任解除書發出前的作為或不作為，從其他方面有效地發出的；
- (b) 不會使任何符合以下說明的條文失效 —
 - (i) 使該責任解除書得以在一次為有關目的而召開的會議上，在獲持有價值不少於最少¹⁵75%的多數債權證持有人親自出席或委任代表(如准許委任代表的話)出席和表決同意下發出的；及
 - (ii) 使該責任解除書得以就特定的作為或不作為而發出的，或使該責任解除書得以在有關受託人死亡時或不再擔任有關受託人時發出的；
- (c) 不會使任何在 1984 年 8 月 31 日時有效的條文失效，但前提是當時有權享有該條文的利益或其後根據第(3)款

¹⁵ Item 8 / 第 8 項

獲給予該條文的利益的人，維持擔任有關信託契據的受託人；或

- (d) 不會剝奪任何人於(c)段所述的條文有效時就其作為或不作為而獲得的豁免，或就該等作為或不作為而獲得彌償的權利。
- (3) 當信託契據的受託人仍有權享有第(2)(c)或(d)款所保留的條文的利益時，該條文的利益可按照第(4)款而給予 —
- (a) 該信託契據的所有現時及未來受託人；或
 - (b) 該信託契據的任何指名受託人，或建議獲委任為該信託契據的受託人的人。
- (4) 有關利益須藉一項決議而給予，而該決議須在 —
- (a) 按照有關信託契據為此而召開的會議上；或
 - (b) (如該信託契據並未訂定召開會議的條文)以原訟法庭批准的方式為此而召開的會議上，
- 獲持有價值不少於最少¹⁶75%的多數債權證持有人親自出席或委任代表(如准許委任代表的話)出席會議通過。

¹⁶ Item 8 / 第 8 項

330. — Immunity of trustees for debenture holders

~~A trustee for a debenture holder is not liable for anything done, or omitted to be done, in accordance with any direction given to the trustee at a meeting held under section 328.¹⁷~~

¹⁷ Item 9 / 第 9 項