

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 10 – Directors and Company Secretaries

CB(1)1747/11-12(03)

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 10 (“Directors and Company Secretaries”) (clauses 444 to 474) 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

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
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"> • 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. • 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>”

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<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"> • Insofar as Part 10 is concerned, we propose to amend clause 462(4) pursuant to this item.
Other amendments specific to Part 10			
2	Clause 449 Direction requiring company to appoint director	(I) Add subclause (2A) to set out the period for complying with Registrar’s directions (not less than one month or more than three months after the date on which the direction is given).	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ suggestion and seeks to provide certainty to companies in relation to the period for complying with Registrar’s directions. Please see paragraph 3 of LegCo Paper No. CB(1)1184/11-12(02) <i>Follow-up actions for the meeting held on 2 December 2011 in relation to Part 10 of the Companies Bill.</i>
		(II) Add subclause (2B) to provide for the Registrar to extend the period for complying with the direction and amend subclause (3) correspondingly.	<ul style="list-style-type: none"> • Given that the period for complying with Registrar’s directions has been expressly stated in subclause (2A), it is considered appropriate to provide for the Registrar to extend that period as necessary to cater for cases in which companies have genuine difficulties in compliance. There are similar provisions in clauses 103(4), 104(4) and 759(3) of the CB.
		(III) Replace “the consequence of failing to comply with it” in subclause (2)(c) with “that a failure to comply with the direction is an offence under subsection (4)”.	<ul style="list-style-type: none"> • This CSA is proposed for clarity. The amended subclause would expressly state that a failure to comply with the direction is an offence.
		(IV) Replace “contravenes” with “fails to comply with” in subclause (4).	<ul style="list-style-type: none"> • This is a drafting change proposed for consistency with subclause (3). Please see paragraph 2 of LegCo Paper No. CB(1)1184/11-12(02) <i>Follow-up actions for the</i>

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
			<i>meeting held on 2 December 2011 in relation to Part 10 of the Companies Bill.</i>
3	Clause 453 Resolution to remove director	(I) Replace “holding office for life on the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984)” with “who has held office for life since 31 August 1984”.	<ul style="list-style-type: none"> This is a drafting change proposed to expressly state the date of the commencement of the Companies (Amendment) Ordinance 1984.
		(II) Add a note under subclause (4) to draw reader’s attention to clause 568.	<ul style="list-style-type: none"> Following the proposed deletion of the signpost definition of “special notice” in clause 2, we consider it more appropriate to add a note to draw reader’s attention to clause 568. Please see proposed CSAs to Part 1 of the CB.
4	Clause 454 Director’s right to protest against removal	(I) Fine-tune the drafting of subclauses (3), (4) and (5)	<ul style="list-style-type: none"> We note that clauses 454 and clause 413 in Part 9 (Cessation statement in relation to, and attendance at, general meeting) provide for similar matters. For consistency, CSAs would be proposed to both clauses to align the wording. We also take the opportunity to fine-tune the drafting of subclauses (3), (4) and (5). There is no change in substance.
		(II) Add “using the rights to secure needless publicity for defamatory matter” as a ground for the Court to make order under subclause (6), and fine-tune the drafting.	<ul style="list-style-type: none"> This CSA is proposed in response to Members’ concern. It puts beyond doubt that “using the rights to secure needless publicity for defamatory matter” would be a ground for the Court to make order under subclause (6). The same ground also appears in the corresponding section in the CO (section 157B(4)). Similar CSAs would be introduced in clauses 413, 414, 418, 544 and 573. We also take the opportunity to fine-tune the drafting of subclause.
		(III) Delete the original subclause (6).	<ul style="list-style-type: none"> Members expressed concern about whether the original subclause (6) would prejudice the High Court Ordinance. On review, we propose to delete the original subclause (6) and the matter will be governed by the High Court Ordinance (Cap

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			4) and the Rules of High Court.
5	Clause 456 Duty to exercise reasonable care, skill and diligence	(IV) Add subclause (7).	<ul style="list-style-type: none"> Members were concerned that there were no provisions on the consequence of non-compliance with the requirements under clause 454. In response to Members' concern, we propose to add subclause (7) to state that the resolution passed under section 453(1) would be void if the company contravenes the relevant requirements. Please see paragraphs 5 to 7 of LegCo Paper No. CB(1)1184/11-12(02) <i>Follow-up actions for the meeting held on 2 December 2011 in relation to Part 10 of the Companies Bill.</i>
		(I) Replace "only because" in subclause (6) with "by reason only that".	<ul style="list-style-type: none"> This is a drafting change proposed in response to Members' suggestion to align the wording of subclause (6) with that of clause 482(2). Please see paragraph 4 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>
6	Clause 460 Permitted indemnity provision	(II) In the Chinese version of subclause (6), replace "並不" with "不會".	<ul style="list-style-type: none"> This is a drafting change proposed for clarity in response to LegCo Legal Adviser's suggestion.
7	Clause 464 Ratification of conduct by director involving negligence, etc.	Add subclause (2)(b)(iiia).	<ul style="list-style-type: none"> The CSA is proposed to reflect our policy intention that an indemnity provision must not provide indemnity against a director in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company.
		Replace "past" in subclause (5) with "former".	<ul style="list-style-type: none"> This is a drafting change proposed for consistency with other provisions in the CB (e.g. clauses 477, 478 and 479 in Part 11).

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8	Clause 467 Direction requiring company to appoint company secretary	(I) Add subclause (2A) to set out the period for complying with Registrar's directions (not less than one month or more than three months after the date on which the direction is given).	<ul style="list-style-type: none"> • See item 2(I) above.
		(II) Add subclause (2B) to provide for the Registrar to extend the period for complying with the direction and amend subclause (3) correspondingly.	<ul style="list-style-type: none"> • See item 2(II) above.
		(III) Replace “the consequence of failing to comply with it” in subclause (2)(c) with “that a failure to comply with the direction is an offence under subsection (4)”.	<ul style="list-style-type: none"> • See item 2(III) above.
		(IV) Replace “contravenes” with “fails to comply with” in subclause (4).	<ul style="list-style-type: none"> • See item 2(IV) above.
9	Clause 472 Minutes of directors’ meetings	Replace “20 years” in subclause (2) with “10 years”.	<ul style="list-style-type: none"> • As mentioned in paragraphs 30 to 31 of LegCo Paper No. CB(1)1277/11-12(01) <i>Follow-up actions for the meetings held on 16 December 2011 and 6 January 2012 in relation to Part 12 of the Companies Bill</i>, we propose to change the period for a company to keep records of resolutions and meetings, etc. in clause 608 from 20 years to 10 years. This CSA is proposed following the change to clause 608.
10	Clause 474	Replace “20 years” in subclause (3) with	<ul style="list-style-type: none"> • See item 9 above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Written record of decision of sole director of private company	"10 years".	

**Financial Services and the Treasury Bureau
Companies Registry
2 May 2012**

449. Direction requiring company to appoint director

- (1) If it appears to the Registrar that a company is in contravention of section 444(2), 445(1) or 448(2), the Registrar may direct the company to appoint a director or directors in compliance with that section.
- (2) The direction must specify—
- (a) the statutory requirement of which the company appears to be in contravention;
 - (b) subject to subsection (2A),¹ the period within which the company must comply with the direction; and
 - (c) ~~the consequences of failing to comply with it~~that a failure to comply with the direction is an offence under subsection (4).²
- (2A) The period must not be less than 1 month or more than 3 months after the date on which the direction is given.¹
- (2B) The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.³
- (3) The company must comply with the direction by—
- (a) making the necessary appointment or appointments ~~before the end of the period specified in the direction³~~; and
 - (b) delivering a notice of the appointment or appointments to the Registrar in accordance with section 636(1),
before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (2B), the extended period.³
- (4) If a company ~~contravenes~~fails to comply with⁴ a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

¹ Item 2(I) / 第 2(I)項

² Item 2(III) / 第 2(III)項

³ Item 2(II) / 第 2(II)項

⁴ Item 2(IV) / 第 2(IV)項

453. Resolution to remove director

- (1) A company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's term of office, despite anything in its articles or in any agreement between it and the director.
- (2) Subsection (1) does not, if the company is a private company, authorize the removal of a director ~~holding office for life or~~ who has held office for life since 31 August 1984 ~~the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984).~~⁵
- (3) Subsections (4), (5), (6), (7) and (8) apply in relation to a removal of a director by resolution, irrespective of whether the removal by resolution is under subsection (1) or otherwise.
- (4) Special notice is required of a resolution—
 - (a) to remove a director; or
 - (b) to appoint somebody in place of a director so removed at the meeting at which the director is removed.

Note—

See also section 568.⁶

- (5) A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.
- (6) A person appointed director in place of a removed director is to be regarded, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become director on the day on which the person removed was last appointed a director.
- (7) In relation to a resolution to remove a director before the end of the director's term of office, no share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the company.
- (8) If a share carries special voting rights (that is to say, rights different from those carried by other shares) in relation to some matters but not others, the reference in subsection (7) to the generality of matters to be voted on at a general meeting of the company is to be construed as a reference to the matters in relation to which the share carries no special voting rights.
- (9) This section is not to be regarded as depriving a person of compensation or damages payable to the person in respect of the termination of—
 - (a) the person's appointment as director; or
 - (b) any appointment terminating with that as director.

⁵ Item 3(I) / 第3(I)項

⁶ Item 3(II) / 第3(II)項

454. Director's right to protest against removal

- (1) On receipt of notice of a resolution under section 453(4) to remove a director, the company must forthwith send a copy of the notice to the director concerned.
- (2) The director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting at which the resolution is voted on.

~~(3) If notice is given of a resolution under section 453(4) to remove a director, the director—~~

~~(a) may make with respect to the resolution representations in writing to the company (not exceeding a reasonable length); and~~

~~(b) may require the company to take the steps referred to in subsection (4) in relation to the representations.⁷~~

~~(4) The steps are—~~

~~(a) if the company receives the representations on a date that is more than 2 days before the day on which notice may be given under section 561(1) to call the meeting—~~

~~(i) to state in every notice given to the members that the representations have been made; and~~

~~(ii) to send a copy of the representations to every member to whom the notice of meeting is or has been given; or~~

~~(b) if the copy of the representations is not sent to every member to whom the notice of meeting is or has been given, to ensure that the representations are read out at the meeting.⁷~~

~~(5) The company must take the steps under subsection (4) unless it is exempted under subsection (6) from doing so.⁷~~

~~(6) On application by the company or by anyone who claims to be aggrieved, the Court may, if satisfied that the person who has made representations and made a requirement under subsection (3)—~~

~~(a) has abused the rights to do so; or~~

~~(b) is using the rights to secure needless publicity for defamatory matter, order that the company is exempted from complying with subsection (5).⁸~~

~~(7) If the company contravenes subsection (5), the resolution passed under section 453(1) is void even though section 552(1) is complied with.⁹~~

~~(3) If notice is given of a resolution under section 453(4) to remove a director, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so—~~

~~(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and~~

~~(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).~~

~~(4) If a copy of the representations is not sent as required by subsection (3) because they were received too late or because of the company's default, the director may (without prejudice to the right to be heard orally) require that the representations be read out at the meeting.~~

~~(5) Copies of the representations need not be sent and the representations need not be read out at the meeting if, on an application either by the company or by any other person who claims to be aggrieved, the Court is satisfied that the rights given by this section are being abused.~~

~~(6) The Court may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, despite the fact that the director is not a party to the application.¹⁰~~

⁷ Item 4(I) / 第4(I)項

⁸ Item 4(II) / 第4(II)項

⁹ Item 4(IV) / 第4(IV)項

¹⁰ Item 4(III) / 第4(III)項

456. Duty to exercise reasonable care, skill and diligence

- (1) A director of a company must exercise reasonable care, skill and diligence.
- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with—
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
 - (b) the general knowledge, skill and experience that the director has.
- (3) The duty specified in subsection (1) is owed by a director of a company to the company.
- (4) The duty specified in subsection (1) has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence, owed by a director of a company to the company.
- (5) This section applies to a shadow director as it applies to a director.
- (6) For the purposes of subsection (5), a body corporate is not to be regarded as a shadow director of any of its subsidiaries by reason only that~~only because~~¹¹ the directors, or a majority of the directors, of the subsidiary are accustomed to act in accordance with its direction or instructions.

¹¹ Item 5(I) / 第 5(I)項

456. 有責任以合理水平的謹慎、技巧及努力行事

- (1) 公司的董事須以合理水平的謹慎、技巧及努力行事。
- (2) 合理水平的謹慎、技巧及努力，指任何合理努力並具備以下條件的人在行事時會有的謹慎、技巧及努力—
 - (a) 可合理預期任何人在執行有關董事就有關公司所執行的職能時會具備的一般知識、技巧以及經驗；及
 - (b) 該董事本身具備的一般知識、技巧以及經驗。
- (3) 第(1)款指明的責任，是有關公司的董事對該公司負有的。
- (4) 第(1)款指明的責任，取代關於公司的董事對該公司負有的以合理水平的謹慎、技巧及努力行事的責任的普通法規則及衡平法原則而有效。
- (5) 本條適用於幕後董事，猶如本條適用於董事一樣。
- (6) 就第(5)款而言，縱使某法人團體的附屬公司的一眾董事或過半數董事，慣於按照該團體的指示或指令行事，該團體並不會¹²僅因此而視為其附屬公司的幕後董事。

¹² Item 5(II) / 第 5(II)項

460. Permitted indemnity provision

- (1) Section 459(3) does not apply to a provision for indemnity against liability incurred by the director to a third party if the requirements specified in subsection (2) are met in relation to the provision.
- (2) The provision must not provide any indemnity against—
 - (a) any liability of the director to pay—
 - (i) a fine imposed in criminal proceedings; or
 - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
 - (b) any liability incurred by the director—
 - (i) in defending criminal proceedings in which the director is convicted;
 - (ii) in defending civil proceedings brought by the company, or an associated company of the company, in which judgment is given against the director;
 - (iii) in defending civil proceedings brought on behalf of the company by a member of the company or of an associated company of the company, in which judgment is given against the director;~~or~~
 - (iiia) in defending civil proceedings brought on behalf of an associated company of the company by a member of the associated company or by a member of an associated company of the associated company, in which judgment is given against the director; or¹³
 - (iv) in connection with an application for relief under section 358 of the predecessor Ordinance or section 891 or 892 in which the Court refuses to grant the director relief.
- (3) A reference in subsection (2)(b) to a conviction, judgment or refusal of relief is to the final decision in the proceedings.
- (4) For the purposes of subsection (3), a conviction, judgment or refusal of relief—
 - (a) if not appealed against, becomes final at the end of the period for bringing an appeal; or
 - (b) if appealed against, becomes final when the appeal, or any further appeal, is disposed of.
- (5) For the purposes of subsection (4)(b), an appeal is disposed of if—
 - (a) it is determined, and the period for bringing any further appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.

¹³ Item 6 / 第 6 項

462. Place where copy of permitted indemnity provision must be kept available for inspection

- (1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies—
 - (a) to that company (whether the provision is made by that company or an associated company of that company); and
 - (b) if the provision is made by an associated company, to that associated company.
- (2) A company to which this section applies must keep the following available for inspection at its registered office or at a place prescribed by regulations made under section 648—
 - (a) a copy of the permitted indemnity provision;
 - (b) if the provision is not in writing, a written memorandum setting out the terms of the provision.¹⁴
- (3) The company—
 - (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and
 - (b) must keep the copy or memorandum available for inspection during that time.
- (4) If the copy or memorandum is kept available for inspection ¹⁴at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be in the specified form and delivered to the Registrar for registration within ~~15~~¹⁴ days after the copy or memorandum is first kept at that place or within ~~15~~¹⁴ days after the change (as the case may be).
- (5) If a company contravenes subsection (2), (3) or (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.
- (6) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

¹⁴ Item 1 / 第 1 項

464. Ratification of conduct by director involving negligence, etc.

- (1) This section applies to the ratification by a company of conduct by a director involving negligence, default, breach of duty or breach of trust in relation to the company.
- (2) A decision of the company to ratify the conduct may only be made by resolution of the members of the company.
- (3) If such a resolution is proposed at a meeting, every vote in favour of the resolution by a member who—
 - (a) is a director in respect of whose conduct the ratification is sought;
 - (b) is an entity connected with that director; or
 - (c) holds any shares in the company in trust for that director or entity,is to be disregarded.
- (4) Subsection (3) does not prevent a member specified in that subsection from attending, being counted towards the quorum for, or taking part in the proceedings at, any meeting at which the decision is considered.
- (5) For the purposes of this section—
 - (a) *conduct* (行為) includes acts and omissions;
 - (b) *director* (董事) includes a ~~former~~^{past}¹⁵ director;
 - (c) a shadow director is to be regarded as a director; and
 - (d) a reference to an entity connected with a director has the meaning given by section 477.
- (6) Nothing in this section affects—
 - (a) the validity of a decision taken by unanimous consent of the members of the company; or
 - (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.
- (7) This section does not affect—
 - (a) any other Ordinance or rule of law imposing additional requirements for valid ratification; or
 - (b) any rule of law as to acts that are incapable of being ratified by the company.

¹⁵ Item 7 / 第 7 項

467. Direction requiring company to appoint company secretary

- (1) If it appears to the Registrar that a company is in contravention of section 465(1) or (4) or 466(2) or (3), the Registrar may direct the company to appoint a company secretary in compliance with that section.
- (2) The direction must specify—
 - (a) the statutory requirement of which the company appears to be in contravention;
 - (b) subject to subsection (2A),¹⁶ the period within which the company must comply with the direction; and
 - (c) ~~the consequences of failing to comply with it~~ that a failure to comply with the direction is an offence under subsection (4).¹⁷
- (2A) The period must not be less than 1 month or more than 3 months after the date on which the direction is given.¹⁶
- (2B) The Registrar may, before the end of the period specified in the direction, by notice in writing extend the period.¹⁸
- (3) The company must comply with the direction by—
 - (a) making the necessary appointment ~~before the end of the period specified in the direction~~¹⁶; and
 - (b) delivering a notice of the appointment to the Registrar in accordance with section 643(1), before the end of the period specified in the direction, or, if the period is extended by the Registrar under subsection (2B), the extended period.¹⁶
- (4) If a company ~~contravenes~~ fails to comply with¹⁹ a direction under this section, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$2,000 for each day during which the offence continues.

¹⁶ Item 8(I) / 第 8(I)項

¹⁷ Item 8(III) / 第 8(III)項

¹⁸ Item 8(II) / 第 8(II)項

¹⁹ Item 8(IV) / 第 8(IV)項

472. Minutes of directors' meetings

- (1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.
- (2) A company must keep the records under subsection (1) for at least ~~10~~²⁰ years from the date of the meeting.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

²⁰ Item 9 / 第9項

474. Written record of decision of sole director of private company

- (1) If a private company has only one director and the director takes any decision that—
 - (a) may be taken in a meeting of directors; and
 - (b) has effect as if agreed in a meeting of directors,the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.
- (3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 2010²¹ years from the date of the decision.
- (4) A director who contravenes subsection (1) commits an offence.
- (5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.
- (6) A person who commits an offence under subsection (4) 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.
- (7) A person who commits an offence under subsection (5) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (8) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.

²¹ Item 10 / 第 10 項