

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill – Miscellaneous

The table below sets out the miscellaneous proposed Committee Stage Amendments (CSAs) in different Parts 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

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

FS: Financial Secretary

LegCo: Legislative Council

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
Part 1 – Preliminary			
1	Clause 7 Company limited by shares	Add subclause (2).	<ul style="list-style-type: none"> This is a technical amendment. Section 4(3) of CO provides that a company whose memorandum contains a condition in accordance with the 4th paragraph of the form set out in Table B in the First Schedule of the CO (which states that “The liability of the members is limited”) is deemed to come within the definition of section 4(2)(a) of CO and is a company limited by shares. This CSA is necessary, otherwise such a company will not comply with subclause (1) and will not come within the definition of “company limited by shares”.
Part 3 – Company Formation and Related Matters, and Re-registration of Company			
2	New clause 69A Copies of	Add a new clause.	<ul style="list-style-type: none"> A member of a company would be entitled to request the company to provide him with a copy of the articles of association (see item 4 below). We consider that the

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	incorporation form to be provided to members		same should apply to the incorporation form.
3	New clause 91A Copies of articles to be provided to members	Add a new clause.	<ul style="list-style-type: none"> To restate existing law (section 26 of CO), with the modification that members would be provided with copies of the articles free of charge.
Part 11 – Fair Dealing by Directors			
4	Clause 529 Declaration to directors: procedures	<p>Delete “to the other directors” in subclause (1), and amend subclause (6) and add subclauses (7) and (8) as follows –</p> <p>“(6) A general notice <u>must be given</u> is not effective unless –</p> <p>(a) it is given at a directors’ meeting; or</p> <p>(b) the director takes all reasonable steps to secure that it is brought up and read at the next directors’ meeting after it is given in writing <u>and sent to the company.</u></p> <p><u>(7) A general notice given under subsection (6)(a) takes effect on the date</u></p>	<ul style="list-style-type: none"> At the Bills Committee meeting on 22 May 2012, there was a suggestion that it would be sufficient for a director to send a declaration of interest by general notice to the company. In this regard, the relevant requirement in the CB is based on sections 182(2), 184 and 185 of the United Kingdom Companies Act 2006. There was a similar suggestion in the United Kingdom Parliament that, if the company had a secretary, it would be sufficient for the notice to be sent to the company secretary. However, it was then considered that informing a company secretary was insufficient and that other directors would need to know about any declaration of interest by a fellow director. They did not accept that it was particularly onerous for a director to tell other directors of a declaration. While a director who declared an interest might send the notice to the company secretary, the director should have the responsibility for ensuring that the notice was sent to the other directors. Should Members consider it sufficient for a director to send a declaration of interest by general notice to the company, the proposed CSAs would reflect the intention. The company must send the general notice to other directors and contravention would be an offence (see item 5 below).

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		<p><u>of the directors' meeting.</u></p> <p><u>(8) A general notice given under subsection (6)(b) takes effect on the twenty-first day after the day on which the it is sent to the company.”</u></p>	
5	<p>New clause 531A</p> <p>Companies must send general notices to other directors</p>	<p>Add a new clause.</p>	<ul style="list-style-type: none"> • This is consequential to the CSAs proposed to clause 529. See item 4 above.

Part 12 – Company Administration and Procedure

6	<p>Clause 547</p> <p>Agreement signified by eligible members who are joint holders of shares</p>	<p>Amend subclauses (1) and (2) as follows –</p> <p>“(1) If—</p> <p>(a) 2 or more eligible members are joint holders of shares of a company; and</p> <p>(b) any holderthe senior holder has signified theirhis or her agreement to a proposed written resolution; <u>and</u></p> <p><u>(c) if the company has received, before the end of the period mentioned in section 548(1), any objection to the proposed written</u></p>	<ul style="list-style-type: none"> • This is proposed in response to Members' suggestion. In the case of joint holder of shares, if any holder has signified their agreement to a written resolution, <u>subject to any objection by a more senior holder</u>, then the other joint holders are to be regarded as having signified their agreement. This is subject to the company' articles.
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Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		<p><u>resolution from any other holder, the holder who has signified the agreement is more senior than the holder who has made the objection,</u></p> <p>then the other joint holder or holders are to be regarded as having signified their agreement to the proposed written resolution for the purposes of section 546(1).</p> <p>(2) For the purposes of this section, the <u>seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.</u>”</p>	

Other relevant matters

(1) Clause 174(2)(b)

When the proposed CSA to clause 174(2)(b) to remove the requirement for a company having issued shares with no voting rights to state the words “non voting” or the Chinese characters “無表決權” in directors’ reports was discussed at the Bills Committee meeting on 30 April 2012, Members enquired if there is similar requirement in other jurisdictions.

Clause 174(2)(b) re-enacts section 57A(1) of CO. It provides that in the case of a company the share capital of which is divided into different classes of shares and includes a class of shares (other than preference or preferred shares so described) the holders of which are not entitled to vote at general meetings of the company, the descriptive title of such shares shall include the words “non voting” or the Chinese characters “無表決權”. Those words or characters shall also appear legibly on any directors’ reports issued by the company.

According to our research, there is no similar provision in the Companies Act 2006 of the UK, Corporations Act of Australia and Companies Act of Singapore.

(2) Clause 544

At the Bills Committee meeting on 22 May 2012, Members asked if there was any information on the legislative intent of the formulation “secure needless publicity for defamatory matter” in section 115A(5) of CO, on which clause 544(1)(b) is based. In this regard, section 115A of CO was inserted by section 79 of the Companies (Amendment) Ordinance No. 6 of 1984. Section 79(5) was derived from section 140(5) of the UK Companies Act 1948. The explanatory memorandum did not provide much information as to why section 115A was added. We could not find any cases in Hong Kong or the UK specifically on the formulation of “needless publicity”.

Financial Services and the Treasury Bureau
Companies Registry
25 May 2012

Companies Bill
《 公司條例草案 》

7. Company limited by shares

(1) For the purposes of this Ordinance, a company is a company limited by shares if the liability of its members is limited by the company's articles to any amount unpaid on the shares held by the members.

(2) For the purposes of subsection (1), the liability of the members of an existing company is to be regarded as being limited by the company's articles to any amount unpaid on the shares held by the members if a condition of the memorandum stating that the liability of the members is limited is regarded as a provision of the articles by virtue of section 93.¹

¹ Item 1 / 第 1 項

69A. Copies of incorporation form to be provided to members

- (1) A company must, on request of a member of the company, provide, without charge, the member with a copy of the incorporation form of the company within 7 days after it receives the request.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.²

² Item 2 / 第 2 項

91A. Copies of articles to be provided to members

- (1) A company must, on request of a member of the company, provide, without charge, the member with an up-to-date copy of the company articles within 7 days after it receives the request.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3.³

³ Item 3 / 第 3 項

529. Declaration to directors: procedures

- (1) A declaration to directors under section 527 must be—
 - (a) made at a directors' meeting;
 - (b) made by notice in writing and sent by the director to the other directors; or
 - (c) made by general notice by the director ~~to the other directors~~.⁴
- (2) A notice for the purposes of subsection (1)(b)—
 - (a) must be sent—
 - (i) in hard copy form; or
 - (ii) if the recipient has agreed to receive it in electronic form, in the electronic form so agreed; and
 - (b) must be sent—
 - (i) by hand or by post; or
 - (ii) if the recipient has agreed to receive it by electronic means, by the electronic means so agreed.
- (3) If a declaration to directors under section 527 is made by notice in writing—
 - (a) the making of the declaration is to be regarded as forming part of the proceedings at the next directors' meeting after the notice is given; and
 - (b) section 472 applies as if the declaration had been made at that meeting.
- (4) A general notice by a director for the purposes of subsection (1)(c) is a notice to the effect that—
 - (a) the director—
 - (i) has an interest (as member, officer, employee or otherwise) in a body corporate or firm specified in the notice; and

⁴ Item 4 / 第4項

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- (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be entered into with the specified body corporate or firm; or
- (b) the director—
- (i) is connected with a person specified in the notice (other than a body corporate or firm); and
- (ii) is to be regarded as interested in any transaction, arrangement or contract that may, after the effective date of the notice, be entered into with the specified person.
- (5) A general notice must state—
- (a) the nature and extent of the director's interest in the specified body corporate or firm; or
- (b) the nature of the director's connection with the specified person.
- (6) A general notice ~~must be given~~~~is not effective unless~~—
- (a) ~~it is given~~ at a directors' meeting; or
- ~~(b) the director takes all reasonable steps to secure that it is brought up and read at the next directors' meeting after it is given~~
- (b) in writing and sent to the company.
- (7) A general notice given under subsection (6)(a) takes effect on the date of the directors' meeting.
- (8) A general notice given under subsection (6)(b) takes effect on the twenty-first day after the day on which the it is sent to the company.⁵

⁵ Item 4 / 第4項

531A. Companies must send general notices to other directors

(1) If a company receives a notice under section 529(6)(b) from a director, it must, within 15 days after day on which it receives the notice, send a copy of the notice to other directors of the company.

(2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 6.⁶

⁶ Item 5 / 第 5 項

547. Agreement signified by eligible members who are joint holders of shares

(1) If—

(a) 2 or more eligible members are joint holders of shares of a company; ~~and~~

(b) any holder~~the senior holder~~ has signified ~~his or her~~their agreement to a proposed written resolution; ~~and~~

(c) if the company has received, before the end of the period mentioned in section 548(1), any objection to the proposed written resolution from any other holder, the holder who has signified the agreement is more senior than the holder who has made the objection,⁷

then the other joint holder or holders are to be regarded as having signified their agreement to the proposed written resolution for the purposes of section 546(1).

(2) For the purposes of this section, the seniority of a⁷ holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

⁷ Item 6 / 第 6 項