

**Bills Committee on Companies Bill**

**Comparison Table for Part 4 – Share Capital**

**PURPOSE**

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To facilitate clause-by-clause examination of Part 4 (Share Capital) of the Companies Bill (CB), this paper provides a comparison table, at **Annex**, on the provisions in Part 4 and the relevant provisions in the Companies Ordinance (Cap 32) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 4 are set out in sections 13 to 42 of Schedule 10 to the CB.

**PART 4 OF THE CB**

2. The major proposals and policy issues concerning Part 4 are set out in Annex A to LegCo Paper CB(1)2066/10-11(01), which was considered by Members at the meeting on 19 May 2011. Members enquired about the rationale behind the proposal for a mandatory no-par system and the details of the proposal that allows a company to apply its share capital in writing off preliminary expenses and expenses of any issue of shares of the company. We have subsequently provided supplementary information to Members via LegCo Paper CB(1)2439/10-11(04).

**ADVICE SOUGHT**

3. Members are invited to note the contents of this paper and provide their views.

**Financial Services and the Treasury Bureau  
Companies Registry  
11 October 2011**

**Comparison Table for Part 4**

This table includes provisions in the third (i.e. “Derivation”) column that indicate the corresponding or original section in the Companies Ordinance (CO) of the clause concerned in the Companies Bill (CB), where applicable. Where reference has been made to the relevant statutory provision(s) in other jurisdictions, such provision(s) is/are also cited in that column. We use the term “Existing law” to mean that the clause is restating an existing section in the CO as set out in the “Derivation” column without change in substance, although the actual wording may be different from the existing section as improvements are made to the drafting language and style.

A list of abbreviations used is as follows:-

ACA: Australia Corporations Act 2001

CO: Companies Ordinance (Cap 32)

SCA: Singapore Companies Act

UKCA 2006: United Kingdom Companies Act 2006

UKC(SSC) Order 2009: United Kingdom Companies (Shares and Share Capital) Order 2009

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
<b>Division 1: Nature of Shares</b>				
129	Nature and transferability of shares	CO s.65	It provides that shares shall be personal estate and transferable in the manner provided by the articles.	Existing law.
130	No nominal value	c.f. SCA s.62A	Companies incorporated in Hong Kong and having a share capital are required to have a par or nominal value ascribed to their shares (CO s.5(4))	New provision to provide that shares in a company shall have no nominal value.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			being the minimum price at which the shares can be issued.	
131	Numbering of shares	CO s.65A	It provides generally that subject to a few exceptions, each share in a company having a share capital shall be distinguished by its appropriate number.	Existing law.
132	Share certificate to be proof of title in the absence of contrary evidence	CO s.71	A certificate under the common seal or official seal kept under s.73A shall be prima facie evidence of title.	Existing law except that the requirements relating to the common seal and official seal are removed as under the CB, the keeping of such seals is optional.
133	Repeal of power to issue stock	c.f. UKCA 2006 s.540(2)	CO s.53(1)(c) provides that a company may convert its paid-up shares into stock <sup>1</sup> .	New provision to provide that a company does not have power to convert its shares into “stock”.
134	Repeal of power to issue share warrants	c.f. SCA s.66	CO s.73 provides that a company may issue “share warrants to bearer”, which are in effect “bearer shares”.	(i) New provision (cl.134(1) and (2)) to repeal a company’s power to issue “share warrants to bearer” and provide that upon the surrender of existing share warrants, the bearer’s

<sup>1</sup> “Stock” is a fund that has a nominal value equivalent to that of the total of the shares so that a member, instead of, e.g. holding particular identified shares of 100 shares of \$10 each numbered 1 to 100, holds a \$1,000.00 stock. The use of “stock” is nowadays uncommon.

Clause	Contents	Derivation	Position in CO	Position in CB
				name will be registered in the company's register of members.
		CO s.97(3) to (5)	<p>(i) The company shall be responsible for any loss incurred if it registers a bearer of the share warrants as a member but the share warrants are not surrendered to the company.</p> <p>(ii) The date of the surrender of the share warrants must be entered in the register of members.</p> <p>(iii) The bearer of share warrants may, if the articles of the company so provide, be deemed to be a member of the company.</p>	(ii) Existing law retained in cl.134(3) to (5) to handle share warrants already in existence.
<b>Division 2: Allotment and Issue of Shares</b>				
135	Exercise by directors of power to allot shares or grant rights	CO s.57B(1), (6) and (7) c.f. UKCA 2006 s.549 (except s.549(2))	<p>The directors shall not without the prior approval of the company in general meeting allot new shares. No such prior approval is required:-</p> <p>(i) for shares allotted pro rata to existing shareholdings; or</p> <p>(ii) for shares allotted to a founder member upon incorporation of the company.</p>	<p>Existing law, plus:-</p> <p>(i) new requirement to obtain shareholders' approval for granting any rights to subscribe for, or to convert any security into, shares in the company;</p> <p>(ii) new provision that allows a</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>proportionate issue of bonus shares without shareholders' approval; and</p> <p>(iii) for the offence of unauthorized allotment, it is our intention to amend the offence provision to align with the revised formulation for "responsible person"<sup>2</sup>.</p>
136	Allotment of shares or grant of rights with company approval	CO s.57B(1) to (4) c.f. UKCA 2006 s.551(1), (2), (4)(b) and (7)	<p>(i) The directors shall not without the prior approval of the company in general meeting allot new shares. Approval may be general or particular to a certain allotment and may be subject to conditions.</p> <p>(ii) Any approval shall continue in force until:-</p> <p>(a) the conclusion of the next annual general meeting (AGM); or</p> <p>(b) the expiration of the period within which the next annual general meeting has to be held,</p> <p>whichever is the earlier; but any approval may be previously revoked or varied by the</p>	<p>Existing law, plus:-</p> <p>(i) new requirement to obtain shareholders' approval for granting any rights to subscribe for, or to convert any security into, shares in the company; and</p> <p>(ii) new provisions on the expiry of a shareholders' approval where the company is not required to have an AGM: the approval will expire in 12 months or on the date of the passing of the written resolution which deals with the matter required</p>

<sup>2</sup> As set out in the LegCo Paper No. CB(1)2636/10-11(01), the formulation of "responsible person" will be revised as an officer or shadow director who "authorizes or permits, or participates in, ~~or fails to take all reasonable steps to prevent~~ the contravention or failure".

Clause	Contents	Derivation	Position in CO	Position in CB
			company in general meeting.	to be done in an AGM.
137	Return of allotment	CO s.45 c.f. UKCA 2006 s.555(3)(b) regarding statement of capital	(i) A company shall within 1 month after an allotment of shares, deliver to the Registrar of Companies (the Registrar) for registration a return of the allotment.  (ii) Where the shares are allotted:- (a) in non-cash consideration; or (b) pursuant to a scheme of arrangement sanctioned by Court order; or (c) due to a capitalization issue,  a copy of the underlying contract, Court order or resolution must also be delivered to the Registrar.	Existing law, plus:-  (i) new provisions to include a “statement of capital”;  (ii) new provisions to require the payment of capital duty on any increase in the “issued share capital” when the return is registered <sup>3</sup> ;  (iii) new provisions to remove the requirement for registration of a copy of the Court order, resolution or contract relating to allotments for non-cash consideration. The company is only required to furnish the particulars of these documents instead; and  (iv) the maximum fine level is lowered from Level 5 to Level 4.
138	Registration of allotment	c.f. UKCA 2006 s.554	Although CO s.45 requires a company to deliver a return of the allotment of shares to the Registrar,	New provision to require a company to register details of an allotment in its

<sup>3</sup> This replaces the current requirement for payment on the amount of nominal share capital, which is abolished as a result of the migration to a mandatory no-par regime under the CB.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			there is no express requirement for the company to enter the information of the allotment and the allottees in the register of members within a specified period.	register of members within 2 months.
139	Issue of share certificate on allotment	CO s.70(1) and (2)	A company must issue share certificate within 2 months after the allotment of shares.	Existing law except that the maximum fine level is raised from Level 3 to Level 4.
140	Order of Court for delivery of share certificate	CO s.70(3)	If a company does not issue the share certificate, a person entitled to the certificate may by notice require the company to do so within 10 days. If the company still fails to do so, the person may apply to the Court for an order to require the company to do so.	Existing law.
141	Validation by Court of issue or allotment	CO s.57C	The company, or a holder or mortgagee of shares or a creditor of a company may apply to the Court for an order to validate an issue or allotment of shares, which was unauthorized under or inconsistent with the law or memorandum or articles of the company.	Existing law except reference to the memorandum is removed.
<b>Division 3: Commissions and Expenses</b>				
142	General	CO s.46(2)	(i) Except as provided in s.46(1), a company	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	prohibition of commissions, discounts and allowances	and (3)	<p>must not apply any of its shares or capital money to pay any commission, discount, or allowance, to any person in consideration of:-</p> <p>(a) his subscribing or agreeing to subscribe for any shares of the company; or</p> <p>(b) procuring or agreeing to procure subscriptions for any shares in the company.</p> <p>(ii) This does not affect the power of a company to pay brokerage.</p>	
143	Permitted commissions	CO s.46(1), (4) and (5)	This sets out the circumstances in which a company may pay commission.	Existing law except that the reference to a “statement in lieu of prospectus” is removed to align with cl.89.
144	Capital may be applied in writing off certain expenses and commission		Under CO s.48B(3)(b) and (4), a company may apply “share premium” to write off preliminary expenses, commission and share issue expenses.	New provision to provide that share capital (instead of “share premium” as the CB will adopt a mandatory no-par regime) may be applied in writing off preliminary expenses, commission and share issue expenses.
<b>Division 4: Transfer and Transmission of Shares</b>				



Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 1: Transfer of Shares</b>				
145	Requirement for instrument of transfer	CO s.66	A company must not register a transfer of shares unless a proper instrument of transfer has been delivered to the company.	Existing law.
146	Registration of transfer or refusal of registration	CO ss.68 and 69(1) and (2)	<p>(i) On the application of the transferor of any share, the company shall enter the name of the transferee in its register of members.</p> <p>(ii) If a company refuses to register a transfer, the company shall, within 2 months send to the transferor and the transferee notice of the refusal.</p>	<p>Existing law, plus:-</p> <p>(i) new provision to expressly allow the transferee, in addition to the transferor, to lodge a transfer with the company;</p> <p>(ii) new provision to require the company to give reasons for refusing to register a transfer upon request, similar to CO s.69(1A); failing to do so shall be an offence; and</p> <p>(iii) the maximum fine level is raised from Level 3 to Level 4.</p>
147	Order of Court for registration	CO s.69(1B)	Where a company refuses to register a transfer of shares, the transferee may apply to the Court for an order to have the transfer registered.	<p>Existing law, except that:-</p> <p>(i) it expressly allows the transferor, in addition to the transferee, to apply to</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>the Court for an order to register the transfer; and</p> <p>(ii) the offence for failing to comply with the Court order is removed.</p>
148	Transfer by personal representative	CO s.67	A transfer of the share of a deceased shareholder made by his personal representative shall be valid.	Existing law.
149	Certification of transfer	CO s.69A	<p>(i) The certification by a company of any instrument of transfer shall be taken as a representation by the company that title documents have been produced to the company but not that the transferor has any title to the shares.</p> <p>(ii) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability as if the certification had been made fraudulently.</p> <p>(iii) The certification is deemed to be made by the company if it is signed or initialled by a person having actual or apparent authority to certify transfers on behalf of the company.</p>	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
150	Issue of share certificate on transfer	CO s.70(1A), (1B), (2) and (4)	A company must issue share certificates after a transfer of shares:-  (i) within 2 months in the case of a private company; or  (ii) within 10 business days in the case of any other company.	Existing law except that maximum fine level is raised from Level 3 to Level 4.
151	Order of Court for delivery of share certificate	CO s.70(3)	If a company does not issue the share certificate, a person entitled to the certificate may by notice require the company to do so within 10 days. If the company still fails to do so, the person may apply to the Court for an order to require the company to do so.	Existing law.
152	Compensation regarding forged share transfers	CO s.74	A company having a share capital has power to make compensation for any loss arising from a transfer of its shares in pursuance of a forged transfer or of a transfer under a forged power of attorney. The company may take insurance, reserve capital, accumulate income or borrow on the security of its property to fund such compensation. The company shall have the same rights against the person liable for the loss as the person compensated would have had.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 2: Transmission of Shares by Operation of Law</b>				
153	Registration or refusal of registration	CO s.69(1A) and (2)	A company must give reasons within 28 days upon request for refusing to register any person as a member in respect of shares transmitted to him by operation of law. Alternatively, the company must register the person as a member within that period.	Existing law, plus:- (i) new provision to require the company to either register, within 2 months, a transmission of shares upon receiving the notification or issuing a notice of refusal; failing to do so shall be an offence; and (ii) the maximum fine level is raised from Level 3 to Level 4.
154	Order of Court for registration		Under CO s.69(1B), where a company refuses to register a transfer of shares, a transferee may apply to the Court to have the transfer registered. It is silent on whether the provision applies to transmissions by operation of law.	New provision (based on CB cl.147 and CO s.69(1B)) which provides that where a company refuses to register a transmission of shares by operation of law, the entitled person may apply to the Court for an order to have the transmission registered.
155	Pre-emption rights in relation to transmission by law		CO s.69(1A) proviso provides that nothing in s.69(1A) shall affect the rights of any member under the articles whereby he is entitled to any rights of pre-emption over, or rights of purchasing,	New provision to state expressly that the registration of an entitled person as a member of the company is subject to any right of pre-emption or right to purchase

Clause	Contents	Derivation	Position in CO	Position in CB
			the shares in question. The effect is not clear.	shares contained in the articles and that right may be enforced against the person.
<b>Subdivision 3: General</b>				
156	Evidence of grant of probate etc.	CO s.72	The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate of a deceased person having been granted to some person shall be accepted by the company as sufficient evidence of the grant.	Existing law.
<b>Division 5: Replacement of Listed Companies' Lost Share Certificates</b>				
157	Interpretation	CO s.71A(1) and (12)	<p>(i) CO s.71A(1) and (12) set out the meaning of terms used in s.71A, namely, “new certificate”, “original certificate”, “registered holder” and “bona fide purchaser”.</p> <p>(ii) “Bona fide purchaser” means:-</p> <p>(a) a person who purchases the shares in good faith for value and without notice of any defect in the title of the seller; or</p> <p>(b) a successor in title to a person in (a).</p>	<p>Existing law, except that:-</p> <p>(i) a new defined term “eligible person” is added to improve the drafting; and</p> <p>(ii) the term “genuine purchaser” (substituting “bona fide purchaser”) is defined to expressly exclude a person to whom the replacement certificate is issued under cl.160 to clarify that protection from rectification is only conferred on</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			(iii) It is not clear whether a person to whom the replacement certificate is issued is to be regarded as a “bona fide purchaser” <sup>4</sup> .	successors in title who are “genuine purchasers” (cl.162).
158	Application for new certificate	CO s.71A(1) and (2)	A person may apply to a listed company for the replacement of a lost share certificate. The application must be made in a specified form and supported by a statutory declaration. The statutory declaration must include prescribed particulars relating to the lost certificate.	Existing law.
159	Publication requirements	CO s.71A(3) to (5)	<p>(i) The listed company must publish a notice of intention for issuing a replacement certificate:-</p> <p>(a) in the newspapers where the value of shares is below \$20,000; and</p> <p>(b) in the Gazette once in each of three consecutive months where the value of shares is at or above \$20,000, or the applicant is not the registered holder.</p> <p>(ii) Before publishing the notice, the listed company must have delivered the notice to</p>	<p>Existing law is simplified so that:-</p> <p>(i) for cases where the value of shares is below \$200,000 (instead of \$20,000 under the CO), the notice will be published in the listed company’s website for one month (instead of in newspapers under the CO); and</p> <p>(ii) for cases where the value of shares is at or above \$200,000 or the applicant is not the registered holder, the notice will be published in the</p>

<sup>4</sup> Under CO s.71A(10)(a), a “bona fide purchaser” is protected from rectification orders which may be granted under CO s.100.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>the stock exchange for exhibition for 1 month in the cases in (a) above and 3 months in the cases in (b).</p> <p>(iii) If the applicant is not the registered shareholder, the listed company must have served a notice to the registered shareholder for 3 months before the listed company may publish the notice of intention.</p>	<p>listed company's website for three months and once in the Gazette within one month after the company has first published the notice on its own website (instead of the Gazette once in each of three consecutive months under the CO).</p>
160	Issue of new certificate	CO s.71A(6) and (7)	<p>(i) A listed company shall not issue a new certificate unless:-</p> <p>(a) it has published a notice of intention to issue a replacement certificate in the newspapers for 1 month where the value of shares is below \$20,000;</p> <p>(b) a period of 3 months from the first publication of the Gazette has expired where the value of shares is at or above \$20,000 or the applicant is not the registered holder;</p> <p>(c) no claim in respect of the relevant share is received by the company; and</p> <p>(d) the necessary instrument of transfer has</p>	<p>(i) Existing law plus new provision to deal with unavoidable breakdown of the company's website.</p> <p>(ii) The requirement on the publication period is amended in line with the simplification mentioned in the item relating to cl.159.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>been prepared.</p> <p>(ii) Where the listed company issues a new certificate, it shall cancel the original certificate and update the register of members accordingly.</p>	
161	Public notice of issue of new certificate	CO s.71A(8) and (9)	A listed company must publish a notice in the Gazette within 14 days of the issue of the new certificate and the cancellation of the original certificate. A copy of the notice must also be delivered to the stock exchange within the same period.	<p>(i) Existing law.</p> <p>(ii) As proposed by the Law Society of Hong Kong at the Bills Committee meeting with deputations on 9 April 2011, we will amend cl.161(1)(a) so that the exemption for a listed company from publishing a notice in the Gazette under cl.159(2) will also apply to the requirement to publish the notice of issue of a new certificate under clause 161(1)(a)<sup>5</sup>.</p>
162	Orders of Court for rectification	CO s.71A(10)	(i) The power of the Court to rectify the register of members is not affected by CO s.71A. The Court may make a rectification order against	Existing law.

<sup>5</sup> We will also amend cl.161(1)(a) so that a listed company that issues a new certificate must, within 14 days after the date of issue –

- (i) publish in the Gazette a notice in the specified form of the issue of the new certificate and cancellation of the original certificate if the company has published a notice under cl.159(2)(a) and (b); and
- (ii) publish on the company's website a notice in the specified form of the issue of the new certificate and cancellation of the original certificate if the company has published a notice under cl.159(2)(a); the notice must be made available on the company's website throughout a period of at least 7 days.



Clause	Contents	Derivation	Position in CO	Position in CB
	of the register	(a) and (b)	<p>the person to whom the new certificate is issued or any person whose name is subsequently entered in the register of members, but no such order shall be made against a “bona fide purchaser”.</p> <p>(ii) If a rectification order is made, the company shall not be liable to the payment of damages arising from the issue of the new certificate.</p>	
163	Liability if rectification cannot be ordered	CO s.71A(10) (c)	If a rectification order cannot be made because of CO s.71A(10), i.e. the registered shareholder is a “bona fide purchaser”, the person to whom the new certificate is issued and any of his successors in title who is not a “bona fide purchaser” shall be liable, jointly and severally, to the person entitled to the shares for the value of the purchase price. The company shall not be liable unless it is shown to have acted deceitfully.	Existing law.
164	Applicant to pay expenses	CO s.71A(11)	All expenses relating to the application for a replacement certificate shall be borne by the applicant.	Existing law.
<b>Division 6: Alteration of Share Capital</b>				

Clause	Contents	Derivation	Position in CO	Position in CB
165	Permitted alteration of share capital	CO s.53 (1)(a), (e), (2) and (3)  c.f. ACA ss.254A(1)(a), 254H (1) to (3) and 254S  c.f. SCA s.71(e)  c.f. UKCA 618(5)	(i) A company, if so authorized by its articles, may alter its share capital in the following manner:-  (a) increase its share capital by new shares;  (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;  (c) convert its paid-up shares into stock, and re-convert that stock into paid-up shares;  (d) subdivide its shares, or any of them, into shares of smaller amount;  (e) cancel shares which have not been taken or agreed to be taken by any person.  (ii) The power must be exercised by the company in general meeting.	(i) Existing law, plus new provision for companies to:-  (a) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;  (b) capitalize its profits, with or without allotting and issuing new shares;  (c) allot and issue bonus shares with or without increasing its share capital; and  (d) cancel shares that have been forfeited.  (ii) The terminology of “consolidation”, “division” and “subdivision” of shares is changed. In the CB, under the no-par regime, the company may convert its shares into a larger or smaller “number of

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>shares”, and the reference to “amount” of shares is replaced by “number of shares”.</p> <p>(iii) The power to convert shares into “stock” is repealed. Please see the above item relating to cl.133.</p> <p>(iv) The alteration need not be authorized by the articles but the articles may prohibit or restrict alterations.</p>
166	Notice of alteration of share capital	CO s.54 (except s.54(1)(b) and (e)) c.f. UKCA 2006 s.619(2) regarding cl.166(2)(c) (about statement of capital)	<p>If a company has:-</p> <p>(i) consolidated and divided its share capital into shares of larger amount than its existing shares;</p> <p>(ii) converted any shares into stock;</p> <p>(iii) re-converted stock into shares;</p> <p>(iv) subdivided its shares or any of them;</p> <p>(v) redeemed any redeemable preference shares; or</p> <p>(vi) cancelled any shares, otherwise than in</p>	<p>(i) Existing law, plus the following new provisions:-</p> <p>(a) the notice of alteration must include a “statement of capital”;</p> <p>(b) if its issued share capital is increased, the notice must state the amount of the increase and the company shall pay the capital duty when the notice is registered (c.f. CO requirement for payment on the amount of nominal share capital, which is</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>connexion with a reduction of share capital; it shall within 1 month after so doing give notice of alteration of share capital to the Registrar in the specified form.</p>	<p>abolished as the CB will adopt a mandatory no-par regime); and</p> <p>(c) the maximum fine level is raised from Level 3 to Level 4.</p> <p>(ii) The situation where a company is required to file a notice of alteration is also changed in connection with the changes in the permitted alterations of share capital under cl.165.</p> <p>(iii) Moreover, a company is not required to give a notice of alteration:-</p> <p>(a) where an allotment of shares is involved, for cl.137 already requires a company to file a return of allotment in such cases; or</p> <p>(b) where a redemption of redeemable shares is involved, for cl.266 already requires a company to file a return of</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				share redemption or buy-back in such cases.
167	Redenomination of share capital	c.f. UKCA 2006 ss.622(1) and (7) and 624(1) and (2)	No corresponding provision in the CO.	(i) New provision to empower a company to, by resolution, convert its share capital, or any class of its share capital, from one currency to another currency.  (ii) A redenomination does not affect any rights or obligations of members under the company's articles or any restrictions affecting members under the articles, and in particular does not affect any rights to dividends, voting rights or liability in respect of amounts unpaid on the shares.
168	Notice of redenomination	c.f. UKCA 2006 s.625(1), (2)(b) and (3) to (5)	No corresponding provision in the CO.	New provision that requires a company to file a notice of redenomination, which includes a "statement of capital", within 1 month after passing such resolution; failing to do so shall be an offence.
169	Reconversion of stock into shares	CO s.53(1)(c)	A company may re-convert "stock" into paid-up shares.	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		and (2)		
170	Notice of reconversion	CO s.54(1)(c) and (2)	If a company has re-converted stock into shares, it shall within 1 month after so doing give notice thereof to the Registrar in the specified form. Failing to do so shall be an offence.	Existing law except that the notice must include a “statement of capital” and the maximum fine level is raised from Level 3 to Level 4.
<b>Division 7: Classes of Shares and Class Rights</b>				
<b>Subdivision 1: Companies having a Share Capital</b>				
171	Application of Subdivision	c.f. UKCA 2006 s.630(1)	No corresponding provision in the CO.	New provision to provide that this Subdivision applies to a company with share capital.
172	Rights attached to shares	c.f. ACA s.246B(1) (a) and (2)(a)	No corresponding provision in the CO.	New provision to provide that class rights should refer to “rights attached to shares in a class of shares”, and further clarify that references to the rights attached to a share in a class of shares are references to the rights of the holder of the share as a member of the company.
173	Classes of shares	c.f. UKCA 2006 s.629	No corresponding provision in the CO.	New provision to provide that shares are in a class if the rights attached to them are in all respects uniform.

Clause	Contents	Derivation	Position in CO	Position in CB
174	Description of shares of different classes	CO s.57A(1) to (3)	<p>(i) For shares with no voting rights, the words “non voting” or the Chinese characters “無表決權” must be included in the descriptive title of the shares and stated on any share certificate, prospectus or directors’ report issued by the company.</p> <p>(ii) A share certificate must contain a statement about the division of the share capital into different classes and the voting rights attached to each class.</p>	Existing law except that the maximum fine level is raised from Level 3 to Level 4.
175	Varying class rights	<p>c.f. UKCA 2006 ss.630(2) to (5) and 632</p> <p>c.f. ACA s.246D(3) (regarding cl.175(4))</p>	<p>(i) The corresponding CO provision (s.63A) regarding the procedures for variation is complicated.</p> <p>(ii) Under s.63A, variation needs to follow any requirements set out in the articles. If the articles do not contain the requirements, s.63A requires different types of approvals (e.g. approved by members holding 75% of the shares of the class in question or by all members of the company) depending on whether the rights are set out in the memorandum.</p>	<p>(iii) New provision to simplify the procedure to vary class rights – in accordance with the provisions in the articles, or with 75% written consent/ special resolution of the class members in the absence of such provisions.</p> <p>(iv) A variation will take effect 28 days after it is made unless an application is made to the Court to have it disallowed (as set out in cl.177).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
176	Notifying class members of variation	c.f. ACA s.246B(3)	No corresponding provision in the CO.	New provision to add an obligation on the company to notify class members of a variation to their rights within 14 days of the variation; failing to do so shall be an offence.
177	Disallowance or confirmation of variation by Court	CO s.64(1) to (4) c.f. ACA s.246D(1), (2), (4) and (5)	<p>(i) Where there is provision in the memorandum or articles authorizing a variation of class rights and such rights are varied, the holders of not less than 10% in total in nominal value of the issued shares of that class may apply to the Court to have the variation cancelled. However, it is not entirely clear whether the right to object applies if there is no such provision in the memorandum or articles and variation is made pursuant to the statutory procedure.</p> <p>(ii) An application to Court must be made within 28 days after the date on which the consent was given or the resolution was passed.</p> <p>(iii) The Court may disallow the variation if it is satisfied that the variation would unfairly prejudice the shareholders of that class; or confirm the variation if not so satisfied. The</p>	<p>(i) Existing law plus new provision to confirm that members with 10% voting right of shares in the class may object to the variation regardless of whether the procedure for variation is provided for in the articles.</p> <p>(ii) The provision that a decision of the Court shall be final is not restated as this prejudices the right of an applicant to appeal.</p>



<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			decision of the Court shall be final.	
178	Delivery of order of Court to Registrar	CO s.64(5)	The company must within 21 days after the making of an order by the Court on an application to disallow a variation, forward a copy of the order to the Registrar.	Existing law, except that:-  (i) the time to register the order with the Registrar is changed from 21 days to 14 days for aligning with similar requirements in this and other Parts; and  (ii) the maximum fine level is raised from Level 3 to Level 4.
179	Notifying Registrar of variation	CO s.64A c.f. UKCA 2006 s.637	A company shall deliver to the Registrar for filing a copy of any document or resolution attaching rights to any class of shares in the company which is not otherwise required to be so filed under other provisions of the CO.	Existing law plus new provision to require the delivery of a notice in the specified form (including a “statement of capital”) when there is a variation of class rights within 1 month after the variation takes effect; failing to do so shall be an offence.
<b>Subdivision 2: Companies without a Share Capital</b>				
180	Application of Subdivision	c.f. UKCA 2006 s.631(1)	No corresponding provision in the CO.	New provision to provide that this Subdivision applies to a company without a share capital.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
181	Rights of members	c.f. ACA s.246B(1) (b) and (2)(b)	No corresponding provision in the CO.	New provision to provide that references in the CB to the rights of a class of members of a company are references to the rights of the members in that class in their capacity as members of the company.
182	Classes of members	c.f. UKCA 2006 s.629(1)	No corresponding provision in the CO.	New provision to provide that members are in a class if the rights of the members are in all respects uniform.
183	Varying class rights	c.f. UKCA 2006 ss.631(2) to (5) and 632 c.f. ACA s.246D(3)	No corresponding provision in the CO.	(i) New provision to provide that a variation may be made in accordance with the provisions in the articles or with 75% written consent/ special resolution of the class members if there is no such provision in the articles.  (ii) A variation will take effect 28 days after it is made unless an application is made to the Court to have it disallowed.
184	Notifying class members of	c.f. ACA s.246B(3)	No corresponding provision in the CO.	New provision to add an obligation on the company to notify class members of a

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	variation			variation within 14 days of the variation; failing to do so shall be an offence.
185	Disallowance or confirmation of variation by Court	c.f. ACA s.246D(1), (2), (4) and (5)	No corresponding provision in the CO.	New provision to provide that 10% of the class members may apply to the Court to disallow the variation. An application should be made within 28 days of the variation. The Court may disallow the variation if it is satisfied that the variation would unfairly prejudice the members of that class; or confirm the variation if not so satisfied.
186	Delivery of order of Court to Registrar	c.f. UKCA 2006 s.635	No corresponding provision in the CO.	New provision to provide that the company must within 14 days after the making of an order by the Court on an application to disallow a variation, forward a copy of the order to the Registrar; failing to do so shall be an offence.
187	Notifying Registrar of variation	c.f. UKCA 2006 s.640	No corresponding provision in the CO.	New provision to provide that a company must file the resolution/ documents authorizing the variation and a specified form with the Registrar within 1 month after the variation takes effect; failing to

Clause	Contents	Derivation	Position in CO	Position in CB
				do so shall be an offence.
<b>Subdivision 3: General</b>				
188	Variation includes abrogation	CO ss.63A(8) and 64(6)	A reference to the variation of class rights shall include a reference to their abrogation.	Existing law.
<b>Division 8: Supplementary and Miscellaneous</b>				
<b>Subdivision 1: Relief from Share Capital Requirements</b>				
189	Interpretation	CO ss.48C(7) and 48E(2) to (4)	Sets out the meaning of a number of terms and expressions used in CO ss.48C to 48F.	Existing law plus a new definition of “issuing company” based on the UKCA 2006 s.610(6) to improve drafting.
190	Group reconstruction relief	CO s.48D(1) to (5)	(i) CO s.48B requires a company to transfer any share premium to a share premium account. On a merger, where one company (A) acquired the shares of another (B) in consideration of an issue of A’s own shares and the true value of B’s shares exceeded the nominal value of those issued by A, the excess has to be transferred to the share	Existing law modified so that the group reconstruction relief will apply to the excess of the value of assets transferred over the net base value of those assets, i.e. that amount need not be transferred to “share capital” account of the issuing company. “Net base value” of the assets is the amount by which the base value of the assets transferred exceeds the base

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>premium account.</p> <p>(ii) The general effect of “merger relief” is that CO s.48B does not apply when pursuant to a merger arrangement, one company has acquired at least 90% of the equity holding of another in exchange for an allotment of its equity shares at a premium.</p> <p>(iii) The general effect of “group reconstruction relief” is to limit the application of CO s.48B in the case of issues at a premium by a wholly owned subsidiary in consideration of a transfer to it of non-cash assets by another company in the same group. The share issuing company is not required to transfer to the share premium account any amount in excess of the amount by which the “base value” of the consideration for the allotted shares exceeds the aggregate nominal value of the allotted shares. “Base value” of the consideration is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets</p>	<p>value of any liabilities of the transferor company assumed by the issuing company as consideration for the assets transferred.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			transferred.	
191	Merger relief	CO ss.48C(1) to (3) and 48D(6)	For the operation of “merger relief”, please see the item for cl.190 above.	Existing law modified so that the merger relief will apply to the amount of the consideration received by the issuing company in excess of the subscribed capital of the other company attributable to the shares acquired or cancelled, i.e. that amount (the excess consideration) need not be transferred to “share capital” account of the issuing company.
192	Merger relief: meaning of 90% equity holding	CO s.48C(4) to (6)	In considering whether the issuing company has secured 90% of the equity holding of another company, a number of special rules apply, e.g. the shares held by the holding company or subsidiary of the issuing company are regarded as held by the issuing company.	Existing law.
193	Relief may be reflected in company’s statement of financial position	CO s.48E(1)	An amount not included in the company’s share premium account (due to the group reconstruction relief or merger relief) may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued are to be included in the issuing company's	Existing law modified due to the removal of the concept of “share premium”.

Clause	Contents	Derivation	Position in CO	Position in CB
			balance sheet.	
194	Regulation	CO s.48F	The Financial Secretary may make regulations to relieve company from the requirements on share premium and restrict or modify the merger relief and group reconstruction relief.	Existing law.
<b>Subdivision 2: Miscellaneous</b>				
195	Provision for different amounts to be paid on shares	CO s.51	A company may:- (i) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares; (ii) accept any payment on shares which is not yet called; and (iii) pay dividends in proportion to the amount paid up on each share.	Existing law.
196	Statement of capital	c.f. UKCA 2006 ss.644(2) and 649(2) c.f.	Under the CO, the capital structure of a company can only be ascertained by searching through a number of documents on the register. Thus, it is not easy to ascertain the capital structure at a specific time without a thorough check of the	(i) New provision, which applies where a provision in Part 4 or Part 5 requires a “statement of capital” to be included in a return or notice delivered to the Registrar (e.g.

Clause	Contents	Derivation	Position in CO	Position in CB
		UKC(SSC) Order 2009 Art.2(3)	register.	<p>wherever there is change to the company's capital).</p> <p>(ii) A statement of capital shows information of the company's share capital as at the time the change occurs.</p> <p>(iii) Cl.196(2) and (3) set out the contents of the "statement of capital", including the total number of issued shares, the amount of issued share capital and the amount so paid, and the details of issued shares of each class if the share capital is divided into different classes.</p>
197	Notice of paid up capital	CO s.350A	If a company includes a statement of its authorized or issued capital in any notice, circular, advertisement or other official publication of the company, it must also include a statement of its paid-up capital.	Existing law modified to remove reference to "authorized capital" as the CB will adopt a mandatory no-par regime.

**Financial Services and the Treasury Bureau  
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