

Bills Committee on Companies Bill

**Comparison Table for Part 11 –
Fair Dealing by Directors**

PURPOSE

To facilitate clause-by-clause examination of Part 11 (Fair Dealing by Directors) of the Companies Bill (“CB”), this paper provides a comparison table, at **Annex**, on the provisions in Part 11 and relevant provisions in the Companies Ordinance (Cap. 32) (“CO”) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 11 are set out in sections 89 to 91 of Schedule 10.

PART 11 OF THE CB

2. The major proposals and policy issues concerning Part 11 are set out in Annex B to LegCo Paper No. CB(1)2280/10-11(01), which was considered by Members at the meeting of 10 June 2011. Members expressed concerns about the application of the provisions on different types of companies and the differences between the CB and the CO provisions. We have subsequently provided supplementary information to Members via LegCo Paper No. CB(1)2577/10-11(01).

ADVICE SOUGHT

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

**Financial Services and the Treasury Bureau
Companies Registry
25 November 2011**

Comparison Table for Part 11

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 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 –

CO: Companies Ordinance (Cap. 32)

Commencement Order No. 3 : The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007

UKCA 2006: United Kingdom Companies Act 2006

Clause	Contents	Derivation	Position in CO	Position in CB
Division 1 : Preliminary				
475	Interpretation <ul style="list-style-type: none"><i>adopted</i>	<ul style="list-style-type: none">Inland Revenue Ordinance (Cap 112) s.27(3)		Existing law with modifications – (a) a new definition for “adopted” is added; (b) a new provision in subcl.(2) on the reference to a minor child or

Clause	Contents	Derivation	Position in CO	Position in CB
	<ul style="list-style-type: none"> • <i>child</i> • <i>director</i> 	<ul style="list-style-type: none"> • CO s.157H(8)(b)(i) & (9) • CO s.157H(10) 	<ul style="list-style-type: none"> • S.157H(9) provides that “child” or “step-child” includes illegitimate child but does not include a person who has attained the age of 18 years. • S.157H(10) provides that in s.157H, “director” includes a shadow director. 	<p>minor adopted child is added; and</p> <p>(c) the definition of “child” is not restricted to a person under the age of 18 years.</p>
476	Circumstances constituting contravention	CO s.157I(6)	S.157I(6) provides that “the relevant circumstances”, in relation to a contravention of s.157H, means all the facts and other circumstances constituting that contravention including, in the case of a transaction or arrangement which but for any fact or circumstance would be authorized by any provision of s.157HA (i.e. excepted transactions), that fact or circumstance.	Existing law.
477	Connected entity	CO s.157H(2)(c), (3)(c), (4)(c), (8) &	There is no specific section in the CO which defines “connected persons” or	Existing law with the following new provisions and modifications in cls.

Clause	Contents	Derivation	Position in CO	Position in CB
		<p>(9) & s.157I(7)</p> <p>c.f. UKCA 2006 s.252(1) & (2)(a) to (d), s.253(2)(b) & (d) & s.1166</p>	<p>“persons connected with a director” for general application to CO provisions. However, the following provisions in the CO apply or extend certain provisions relating to loan transactions with directors to persons connected with a director –</p> <p>(a) s.157H(2)(c), (3)(c) & (4)(c) prohibits a company or relevant company (as the case may be) from entering into loan transactions with another company in which any one or more of the directors of the company holds a controlling interest. (There is no definition of “controlling interest” in the CO);</p> <p>(b) s.157H(8) & (9) provides that, in the case of a listed company, or a company in the same group as a listed company, references to a director in s.157H(2), (3) and (4) (i.e. provisions on prohibitions against loan transactions with</p>	<p>477 and 478 –</p> <p>(a) expanding the scope of entity connected with a director to cover –</p> <ul style="list-style-type: none"> (i) the director’s adult child, adult step-child and adult illegitimate child; (ii) the director’s adopted child; (iii) the director’s parent; (iv) the director’s cohabitee of same sex or different sex; (v) the cohabitee’s minor child or minor adopted child who is not the director’s child or adopted child and lives with the director; (vi) an associated body corporate; (vii) a trustee of a trust the beneficiary of which includes the director’s minor adopted child; and

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>directors) include the spouse, minor child, minor step-child and minor illegitimate child of the director, and specified categories of trustee and partner;</p> <p>(c) s.157I(7) provides that for the purpose of s.157I (civil consequence of contravention of prohibitions against loan transactions), a person is connected with a director if the person is the spouse, minor child, minor step-child or minor illegitimate child of the director, specified category of trustee or partner, or a company in which the director or any of the aforesaid connected persons holds a controlling interest.</p>	<p>(viii) a business partner of the director’s minor adopted child;</p> <p>(b) “employee share scheme” and “partner” are now defined.</p>
478	Family member of director or former director	CO s.157H(8)(b)(i) & (9) c.f. UKCA 2006 s.253(1) & (2)(a), (c) & (e)	See paras (b) and (c) of Position in CO for cl. 477.	See para (a)(i), (ii) & (iii) of Position in CB for cl. 477.

Clause	Contents	Derivation	Position in CO	Position in CB
479	Director or former director associated with, or controlling, body corporate	CO s.157H(2)(c), (3)(c) & (4)(c) c.f. UKCA 2006 s.254 & s.255	See para (a) of Position in CO for cl. 477.	Existing law with modifications and new provisions. Instead of restating the controlling interest provisions in CO s.157H(2)(c), (3)(c) & (4)(c) without a definition of “controlling interest”, cl.479 determines – (a) by reference to a 30% voting power test and a shadow director test, whether a body corporate is an entity connected with a director (cl.479(1)(a) & (b)); and (b) by reference to a 50% voting power test, whether a body corporate is deemed to have been controlled (cl.479(2) & (3)).
480	Company subject to more than one prohibition	c.f. UKCA 2006 s.225		New provision to make it clear that where a company is prohibited by more than one provision of this Part from entering into a transaction or arrangement without the approval of the members of a company, all the

Clause	Contents	Derivation	Position in CO	Position in CB
				applicable approvals have to be obtained.
481	Application to transaction or arrangement despite its governing law	c.f. UKCA 2006 s.259		New provision to make clear that the provisions of this Part apply whether or not the law governing a transaction or arrangement is the law of Hong Kong. This is to avoid the parties attempting to contract out of the provisions by choosing a foreign law to govern the transaction or arrangement.
Division 2 : Loan, Quasi-loan and Credit Transaction				
Subdivision 1 : Preliminary				
482	Interpretation	CO s.157H(10) & (11)(c)	(a) S.157H(10) provides for the definitions of “director”, “guarantee”, “land” and “services”. (b) “relevant company” and “relevant private company” are defined in s.157H(10) for the purposes of the provisions under ss.157H and 157HA which subject a non-private company and a private company	Existing law and definitions in respect of the expressions “director”, “guarantee”, “land” and “services” and the provision on whether a body corporate is to be treated as a shadow director of its subsidiaries. A new definition of “specified company” (i.e. public company, or a

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>that is a member of a group of companies which includes a listed company (i.e. a relevant private company) to tighter restrictions.</p> <p>(c) S.157H(11)(c) provides that a body corporate is not to be treated as a shadow director of any of its subsidiaries by reason only that the director or a majority of the directors of the subsidiary are accustomed to act in accordance with its direction or instructions.</p>	<p>private company or company limited by guarantee that is a subsidiary of a public company) is introduced to replace “relevant company” and “relevant private company” in CO ss.157H and 157HA for the purpose of imposing on a specified category of companies tighter restrictions relating to certain types of loan transactions. See Position in CB for cls. 492 to 494 in respect of the tighter restrictions that apply to a specified company.</p>
483	Quasi-loan	CO s.157H(10) & (11)(b)	S.157H(10) provides for the definition of “quasi-loan”. S.157H(11)(b) provides that the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.	Existing law.
484	Credit transaction	CO s.157H(10)	S.157H(10) provides for the definitions of “credit transaction”, “conditional sale agreement” and	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			“hire-purchase agreement”.	
485	Person for whom transaction or arrangement entered into	c.f. UKCA 2006 s.212		New provision for determining for whom a transaction or arrangement is entered into.
486	Prescribed approval of members	c.f. UKCA 2006 s.197(1) to (4), s.224 & s.239(3) & (4); and Commencement Order No. 3 Sch. 3 para.8(1) to (3)		New provision to explain the reference in Division 2 to “prescribed approval of the members of a company” and to set out the specific requirements and ancillary provisions in respect of members’ approval of a transaction or arrangement that is required to be obtained.
487	Value of transaction or arrangement etc.	c.f. UKCA 2006 s.211(1) to (6)		In respect of cls. 487 and 488, provisions of similar concept can be found in CO s.157HA(10) & (13) which calculate the aggregate value of relevant transactions to determine whether the financial limit of \$750,000 under CO s.157HA(9) for

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>the ordinary business exception is exceeded. The financial limit of \$750,000 is not restated in the CB (see Position in CB for cl. 502).</p> <p>Cls. 487 and 488 are new provisions for determination of whether the aggregate value of relevant transactions exceeds the financial limit for the new exception under cl. 496(1).</p>
488	Relevant transaction or arrangement	c.f. UKCA 2006 s.210		<p>See Position in CB for cl. 487.</p> <p>There will be a committee stage amendment to delete the reference to “section 497” in cl. 488(3)(b) as section 497 does not refer to a relevant transaction.</p>
489	Total exposure amount	CO s.157HA(11) & (12)	S.157HA(11) imposes a financial limit on the application of certain exceptions to prohibitions against loan transactions with directors by providing that the four exceptions for	Existing concept of financial limit with modifications as to the scope of application and the calculation – (a) the “relevant amount” formula in

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>expenditure on company business, home loan, leasing goods or land and transaction in ordinary course of business as specified in s.157HA(3), (6) and (7) do not authorize a company to enter into a transaction if, at the time the transaction is entered into, the relevant amount exceeds 5% of the amount of the company's net assets. S.157HA(12) explains what is "relevant amount" for the purpose of s.157HA(11).</p>	<p>CO s.157HA(12) is replaced by the "total exposure amount" formula in cl. 489;</p> <p>(b) the financial limit no longer applies to the exception for expenditure on company business and exception for transaction entered into in the ordinary course of business (see Position in CB for cls. 497 and 502);</p> <p>(c) in the case of the two exceptions for home loan and for leasing goods and land etc., the financial limit of 5% of the company's net assets has been changed to 10% of the company's total assets or called-up share capital (cls. 500(2)(a) and 501(2)(a)); and</p> <p>(d) the loan transactions in favour of directors of the company's holding company and also</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				entities connected with a director of the company are included in the calculation of the total exposure amount financial limit (cl. 489(2)(b), (c) & (3)(b), (c)).
490	Preservation of effect of members' unanimous consent	c.f. UKCA 2006 s.239(6)(a)		New provision to make it clear that the effect of unanimous consent of the members is preserved despite any restriction that a transaction or agreement must not be entered into without the prescribed approval of a company's members.
Subdivision 2 : Prohibitions				
491	Company must not make loan etc. to director	CO s.157H(2)(a) & (b) c.f. UKCA 2006 s.197(1), (2) & (5)	(a) Every company is prohibited from making a loan to a director of the company or of its holding company or providing guarantee or security in connection with a loan. (b) The expression "company" is defined in s.157H(10) for the purpose of s.157H.	Existing law with the following modifications and new provisions – (a) removal of the prohibition in section 157H(2)(c) on making a loan or providing guarantee or security in connection with a loan to a company controlled by any one or more of the directors of a private company or a

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>(c) Approval by the company's members is one of the exceptions under s.157HA to the prohibition but such exception is only applicable in the case of a private company other than one that is in the same group as a listed company (s.157HA(2)).</p>	<p>company limited by guarantee, which is not a member of a group of companies of which a listed company is a member (see Position in CB for cl. 493);</p> <p>(b) the definition of "company" in CO s.157H(10) is not restated in the CB as there are no current companies to which s.157H(10)(b) applies;</p> <p>(c) the definition of "company" in cl. 2(1) now applies to the provisions on loan transaction (i.e. Division 2 of this Part); and</p> <p>(d) instead of strict prohibition with certain specified exceptions as in the CO, any company may now make a loan with approval of the members of the company and / or its holding company (cl. 491(1) & (2)), but the approval by resolution of a specified</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>company is subject to the disinterested voting requirement in cl.486(2)(b)(ii) & (5)(a).</p> <p>Cl. 491(3) is a new provision which allows the following exemptions from the requirement to obtain members' approvals in cl. 491(2) –</p> <p>(a) a holding company which is incorporated outside Hong Kong is exempt from obtaining members' approval so as to avoid extra-territorial effect; and</p> <p>(b) a wholly owned subsidiary of a holding company incorporated in Hong Kong is exempt from obtaining members' approval, as the holding company would be able to exercise control through its 100% shareholding.</p>
492	Specified company must	CO s.157H(3)(a) & (b)	(a) A relevant company is prohibited from making a quasi-loan to a	Existing law with the following modifications and new provisions –

Clause	Contents	Derivation	Position in CO	Position in CB
	not make quasi-loan etc. to director	c.f. UKCA 2006 s.198(1) to (3) & (6)	<p>director of the company or of its holding company or providing guarantee or security in connection with a quasi-loan.</p> <p>(b) “relevant company” is defined in s.157H(10) and in essence means a non-private company, or a private company which is a member of the same group as a listed company.</p>	<p>(a) the prohibition against quasi-loans applies to a “specified company” instead of a “relevant company” (cl. 492(1) & (2)) (see Position in CB for cl. 482);</p> <p>(b) therefore, a private company and a company limited by guarantee will only be subject to the tighter restrictions relating to quasi-loans to a director if they are subsidiaries of a public company ; and</p> <p>(c) instead of strict prohibition with certain specified exceptions as in the CO, a specified company may now make a quasi-loan to a director with members’ approval of the company and / or its holding company (cl. 492(1) & (2)), but the approval by resolution of a specified</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>company is subject to the disinterested voting requirement in cl. 486(2)(b)(ii) & (5)(a); and</p> <p>(d) cl. 492(3) is a new provision which allows exemptions from the requirement to obtain members' approvals in cl.492(2) (see Position in CB for cl.491(3)).</p>
493	Specified company must not make loan or quasi-loan etc. to connected entity	<p>CO s.157H(2), (3), (8) & (9)</p> <p>c.f. UKCA 2006 s.200(1) & (2)</p>	<p>(a) See Position in CO for cl. 477 (connected entity).</p> <p>(b) S.157H(2)(c) prohibits a company from making a loan to another company in which any one or more of the directors of the company holds a controlling interest, or providing guarantee or security in connection with a loan made by any person to that other company.</p> <p>(c) S.157H(3)(c) prohibits a relevant company from making a quasi-loan</p>	<p>Existing law with the following modifications and new provisions –</p> <p>(a) the scope of connected persons is expanded or modified as explained in Position in CB for cls. 477 and 479;</p> <p>(b) cl. 493 only applies to a “specified company” and replaces the provisions relating to prohibitions of loans and quasi-loans to persons connected with a director in CO</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>to another company in which any one or more of the directors of the company holds a controlling interest, or providing guarantee or security in connection with a quasi-loan made by any person to that other company.</p> <p>(d) For definition of “relevant company”, see Position in CO for cl. 492.</p> <p>(e) In the case of a listed company, or a company in the same group as a listed company, the prohibitions in s.157H(2) & (3) also apply to the spouse, minor child, minor step-child and minor illegitimate child of the director, and specified categories of trustee and partner (s.157H(8) & (9)).</p>	<p>s.157H(2)(c), (3)(c), (8) & (9);</p> <p>(c) therefore, a private company and a company limited by guarantee will only be subject to the tighter restrictions relating to loans or quasi-loans to a connected entity if they are subsidiaries of a public company; and</p> <p>(d) instead of strict prohibition with certain specified exceptions as in the CO, a specified company may now make a loan or quasi-loan to an entity connected with a director of the company with members’ approval, subject to the disinterested voting requirement in cl. 486(2)(b)(ii) & (5)(b).</p>
494	Specified company must not enter into	CO s.157H(4), (8) & (9)	(a) See Position in CO for cl. 477 (connected entity).	Existing law with the following modifications and new provisions –

Clause	Contents	Derivation	Position in CO	Position in CB
	credit transaction etc. as creditor for director or connected entity	c.f. UKCA 2006 s.201(1) to (3) & (6)	<p>(b) S.157H(4) prohibits a relevant company from entering into a credit transaction as creditor for a director of the company or of its holding company, or for another company in which any one or more of the directors of the company holds a controlling interest, or providing guarantee or security in connection with a credit transaction.</p> <p>(c) For definition of “relevant company”, see Position in CO for cl. 492.</p> <p>(d) In the case of a listed company, or a company in the same group as a listed company, the prohibition in s.157H(4) also applies to the spouse, minor child, minor step-child and minor illegitimate child of the director, and specified categories of trustee and partner (s.157H(8) & (9)).</p>	<p>(a) the prohibition against credit transactions applies to a “specified company” instead of a “relevant company” (cl. 494(1) & (2)) (see Position in CB for cl. 482);</p> <p>(b) therefore, a private company and a company limited by guarantee will only be subject to the tighter restrictions relating to credit transactions in favour of a director or connected entity if they are subsidiaries of a public company;</p> <p>(c) instead of strict prohibition with certain specified exceptions as in the CO, a specified company may now enter into a credit transaction in favour of a director of the company or connected entity of such director or a director of the holding company with approval of the members of</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>the company and / or its holding company (cl. 494(1) & (2)), subject to the disinterested voting requirement in cl. 486(2)(b)(ii) & (5)(c);</p> <p>(d) the scope of connected persons is expanded and modified as explained in Position in CB for cls. 477 and 479;</p> <p>(e) in so far as the prohibition on credit transactions in favour of connected entities is concerned, cl. 494 replaces the provisions on prohibition on credit transactions in favour of persons connected with a director in CO s.157H(4)(c), (8) & (9); and</p> <p>(f) cl. 494(3) is a new provision which allows exemptions from the requirement to obtain members' approvals in cl. 494(2) (see Position in CB for cl.491(3)).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
495	Company must not take part in arrangement purporting to circumvent sections 491 to 494	CO s.157H(5) to (7) c.f. UKCA 2006 s.203(1), (2), (5) & (6)	<p>To avoid circumvention of the prohibitions under s.157H(2), (3) & (4), a company is prohibited from arranging for the assignment or assumption of any rights, obligations or liabilities under a transaction that, if entered into by the company, would have contravened the prohibitions (s.157H(5)). If it does so, the company is treated as having entered into the transaction in question on the date of that arrangement (s.157H(6)).</p> <p>A company is also prohibited from taking part in any arrangement, whereby another person enters into a transaction, which if entered into by the company, would have contravened the prohibitions, and under the arrangement that person has obtained or is to obtain a benefit from the company, its holding company or any subsidiary of its holding company (s.157H(7)).</p>	<p>Existing law with the following modifications and new provisions –</p> <p>(a) instead of strict prohibition as in the CO, a company may now enter into such transaction with the approval of the members of the company and/or its holding company (cl. 495(1) & (2)), subject to the disinterested voting requirement in cl 486(2)(b)(ii) & (5)(d); and</p> <p>(b) cl. 495(3) is a new provision which allows exemptions from the requirement to obtain members’ approvals in cl. 495(2) (see Position in CB for cl. 491(3)).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
Subdivision 3 : Exceptions to Subdivision 2				
496	Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of total assets or called-up share capital	c.f. UKCA 2006 s.207(1) & (2)		New provision to exempt a company from the prohibitions if the aggregate of the value of a loan, quasi-loan, credit transaction, guarantee or security in question, and the value of any other relevant transaction or arrangement, as determined pursuant to cls. 487 and 488, does not exceed 5% of the company's total assets or called-up share capital.
497	Exception for expenditure on company business	CO s.157HA(3)(a) c.f. UKCA 2006 s.204(1)	S.157HA provides for exceptions to the prohibitions against loan transactions in s.157H. The excepted transactions fall under six heads, namely, intra-group transactions, transactions by private companies approved in general meeting, expenditure on company business, home loan, leasing goods or land and transactions in ordinary course of business.	Existing law with the following modifications – (a) the exception is extended to expenditure of a director of the company's holding company and an entity connected with a director of the company; (b) the two conditions concerning company's approval and discharge of liability imposed by

Clause	Contents	Derivation	Position in CO	Position in CB
			S.157HA(3)(a) provides that a company is not prohibited by s.157H from providing its directors with funds to meet company expenditure. This exception is, however, subject to the two conditions in s.157HA(4).	CO s.157HA(4) are removed; and (c) the financial limit with reference to 5% of the company's net assets in CO s.157HA(11) is removed.
498	Exception for expenditure on defending proceedings etc.	c.f. UKCA 2006 s.205		New provision permitting a company to fund a director's expenditure in defending the criminal or civil proceedings specified in cl. 498(1) provided that the director shall repay the funds and discharge the liability incurred by the company as set out in cl. 498(2).
499	Exception for expenditure in connection with investigation or regulatory action	c.f. UKCA 2006 s.206		New provision permitting a company to fund a director's expenditure on putting up a defence in the investigation or regulatory action specified in cl. 499(1) provided that the director shall repay the funds and discharge the liability

Clause	Contents	Derivation	Position in CO	Position in CB
				incurred by the company as set out in cl. 499(2).
500	Exception for home loan	CO s.157HA(3)(b), (5)(a), (c) & (d) & (11) c.f. UKCA 2006 s.209(3)	S.157HA(3)(b) provides that a company is not prohibited by s.157H from providing a home loan to its directors, subject to the four conditions in s.157HA(5)(a), (b), (c) & (d).	Existing law with the following modifications – (a) the exception is extended to a director of the company’s holding company and an employee of the company who is an entity connected with a director of the company (cl. 500(1)(a)); (b) the financial limit is changed from 5% of the company’s net assets to 10% of the company’s total assets or called-up share capital (see Position in CB for the total exposure amount financial limit under cl. 489); and (c) the condition in CO s.157HA(5)(b) which imposes on

Clause	Contents	Derivation	Position in CO	Position in CB
				the transaction a financial limit of not exceeding 80% of the value of the premises is removed.
501	Exception for leasing goods and land etc.	CO s.157HA(3)(c) & (11)	S.157HA(3)(c) provides that a company is not prohibited from leasing or hiring goods or leasing land to a director of the company, on terms not more favourable than the terms it is reasonable to expect the company to have offered on the open market to a person who is unconnected with the company.	Existing law with the following modifications – (a) the exception is extended to a director of the company’s holding company and an entity connected with a director of the company (cl. 501(1)); and (b) the financial limit is changed from 5% of the company’s net assets to 10% of the company’s total assets or called-up share capital (cl. 501(2)(a)) (see Position in CB for the total exposure amount financial limit under cl. 489).
502	Exception for transaction	CO s.157HA(6) to (8)	(a) S.157HA(6) provides that a company is not prohibited by	Existing law with the modification that the two financial limits of

Clause	Contents	Derivation	Position in CO	Position in CB
	entered into in ordinary course of business	c.f. UKCA 2006 s.207(3) & s.209(1) & (2)	<p>s.157H(2) from making a loan to a director if the ordinary business of that company includes those types of transactions. Similarly, s.157HA(7) provides that a relevant company is not prohibited by s.157H(3) or (4) from entering into a quasi-loan or a credit transaction if the ordinary business of the company includes those types of transactions.</p> <p>(b) The exception is subject to the conditions in s.157H(8) that the transactions must be entered into in the ordinary course of the company's business and the amount of the transaction must not be greater, and the terms must not be more favourable, than what is reasonable to expect the company to have offered to a person of the same financial standing who is unconnected with the company. In addition to the financial limit of</p>	\$750,000 and with reference to 5% of the company's net assets under CO s.157HA(9) & (11) respectively are removed.

Clause	Contents	Derivation	Position in CO	Position in CB
			not exceeding 5% of the company's net assets imposed by s.157HA(11) as explained above (see position in CO for clause 489), a financial limit of \$750,000 is imposed on the exception (s.157HA(9)).	
503	Exception for intra-group transaction	CO s.157HA(1)	It provides that s.157H does not prohibit a company that is a member of a group of companies from making a loan or quasi-loan to, or entering into a credit transaction as creditor for, a company that is a member of the same group.	Existing law (A CSA will be introduced so that the intra-group exception will apply to clauses 491 to 494 (instead of 493 or 494 as currently stated) to preserve the existing law)
Subdivision 4 : Consequences of Contravention				
504	Civil consequences of contravention	CO s.157I(4) c.f. UKCA 2006 s.213	S.157I sets out the civil consequences of transactions contravening s.157H. The consequences are basically twofold as outlined below – (a) The validity of the transaction – (i) Where a transaction is entered into in breach of s.157H, the transaction is itself not	Existing law in so far as it relates to the liability of directors (cl. 504(2) & (3)). The other authorizing directors are liable unless that they were not aware of the circumstances constituting the contravention. There are new provisions stating that subject to the exemptions in cl. 504(4), a connected entity for whom

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>invalidated (s.157I(5)), but the person receiving the loan etc., is liable to repay it to the company immediately unless he is not a director of the company or of its holding company and he shows that, at the time of the loan was made, he did not know of the relevant circumstances (s.157I(1)). With regard to any guarantee or security given in breach of s.157H, it is not enforceable against the company (s.157I(2)).</p> <p>(ii) This general rule of unenforceability under s.157I(2) is, however, subject to two qualifications set out in s.157I(3). The first qualification is that it shall not apply to any guarantee or security provided in connection with a loan to a person who is not a director of</p>	<p>the company entered into the transaction and the director with whom such an entity is connected are also liable (cl. 504(3)(b) & (c)).</p> <p>The provision in CO s.157I for the contravening transactions to be valid but unenforceable against the company is replaced with a provision that the transaction is voidable at the election of the company (cl. 504(1)).</p> <p>Suitable committee stage amendments will be introduced in response to the view of the deputations that the wording of cl. 504(1)(c) is not wide enough to cover all innocent parties as it only applies to persons “not a party to a transaction” and that a lending bank will not come within the wording.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>the company or of its holding company; and the person to whom the guarantee or security was provided did not know the relevant circumstances at the time of the transaction (s.157I(3)(a)). The second qualification is that it shall not affect an interest in any property which has been passed by the company to any person by way of security provided in connection with any loan (s.157I(3)(b)).</p> <p>(b) The liability of the directors – Under s.157I(4), a director of a company which has entered into a transaction in contravention of s.157H is liable –</p> <p>(i) to account to the company for any gain made directly or indirectly by the transaction; and</p>	

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>(ii) jointly and severally with any other director, to indemnify the company for any loss or damage resulting from the transaction</p> <p>if certain conditions are met (including, inter alia, proof of “knowingly and wilfully authorized or permitted”).</p>	
505	Affirmation of contravening transaction or arrangement	c.f. UKCA 2006 s.214 & s.239(6)(a)		Cls. 505 and 506 are new provisions which allow for subsequent affirmation of loans, quasi-loans, credit transactions or related arrangements within a reasonable period of time.
506	Provisions supplementary to section 505	c.f. UKCA 2006 s.197(3) & (4), s.224 & s.239(3) & (4)		See Position in CB for cl. 505. New provision to set out the specific requirements and ancillary provisions in respect of members’ approval for subsequent affirmation of loans, quasi-loans, credit transactions or related arrangements.

Clause	Contents	Derivation	Position in CO	Position in CB
Division 3 : Payment for Loss of Office				
Subdivision 1 : Preliminary				
507	Interpretation	CO s.163B(3)(b) c.f. UKCA 2006 s.215(2) to (4), s.219(1) & (2) & s.223	<p>(a) In relation to the term “affected member” – S.163B(3)(b) provides that the approval of holders of shares to which an offer relates or holders of shares of that class is required to be obtained for the making of the proposed payment for loss of office or retirement referred to in s.163B(1).</p> <p>(b) In relation to the term “director” – The CO provisions on payments to directors for loss of office etc. (ss.163 to 163D) do not apply to shadow directors.</p> <p>(c) In relation to the term “takeover offer” – S.163B only applies to a payment for loss of office made to a company’s director or former director in connection with</p>	<p>(a) The definition of “affected member” in cl. 507(1) restates the existing law.</p> <p>(b) For the purposes of Division 3, "director" includes a shadow director (definition of director in cl.507(1)) though any reference to “loss of office as a director” excludes loss of a person's status as a shadow director (cl.507(2)(b)).</p> <p>(c) By virtue of cl. 507(1) (definition of “takeover offer”) and cl. 514(1), the prohibitions in connection with a share transfer are extended to include all transfers of shares in the company or in its subsidiary resulting from a takeover offer, as there seems to be no particular reason for limiting the provisions</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>transfers resulting from certain types of offers which do not embrace all forms of offers for shares (s.163B(1)(a), (b), (c) & (d)).</p>	<p>to those offers as listed in CO s.163B(1).</p> <p>(d) There are new provisions to make clear what is regarded as a loss of office payment to plug loopholes in the case of payment via other parties or through other means (cl. 507(2) to (4)).</p> <p>(e) Cl. 507(5) is a new provision for alignment with similar provisions in cls. 482(2) (relating to Division 2), 521(2) (relating to Division 4) and 535(7) (relating to Division 6).</p>
508	Payment for loss of office	CO s.163D(2), (3)(a) & (6)	<p>(a) S.163D supplements provisions in ss.163, 163A, 163B and 163C and defines the concept of a payment for loss of office.</p> <p>(b) Payment for loss of office is defined in s.163D(3)(a). The term does not include damages for</p>	Existing law plus new provisions in cl. 508(4) to (6) on the application of the new law on commencement of the CB.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>breach of contract or pensions (s.163D(3)(b)).</p> <p>(c) In relation to a transfer of property or shares referred to in s.163A or 163B, any excess value of the share price or any valuable consideration paid to a director will be deemed to be a loss of office payment (s.163D(2)).</p> <p>(d) References in s.163D to a director include references to a past director (s.163D(6)).</p>	
509	Prescribed approval of members or affected members	CO s.163D(4) c.f. UKCA 2006 s.217(1) to (3), s.219(4), s.224 & s.239(3) & (4); and Commencement Order No. 3 Sch.3 para.12(2)	S.163D(4) sets out the procedural requirements for meetings which are required under ss.163, 163A, 163B and 163C to approve payment to a director. Two of the requirements are that – (a) the notice convening the meeting shall give full particulars with respect to the payment (s.163D(4)(a)); and	Existing law with modifications and new provisions as follows – (a) the restrictions on voting in relation to private companies in s. 163D(4)(c) of CO is removed, as the disinterested voting requirement for approving a loss of office payment is applicable for public companies only (cl.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>(b) the director to whom the payment is proposed to be made and any person holding shares in the company in trust for him are not entitled to vote or be counted in the quorum (s.163D(4)(c)).</p>	<p>509(2)(b)(ii));</p> <p>(b) the disinterested voting requirement for approving a loss of office payment is extended to persons other than the director in question or person holding shares in trust for him (cl. 509(2)(b)(ii), (4)(b) & (c) & (5)(b) to (e));</p> <p>(c) unlike CO s.163D(4)(c), the disinterested voting requirement no longer restricts the counting of members towards the quorum for, or their taking part in the proceedings at, the meeting concerned (cl. 509(6)); and</p> <p>(d) new provisions relating to the sending of memorandum to members to set out particulars of payments (cl. 509(2)(a) & (b)(i)).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
510	Preservation of effect of members' or affected members' unanimous consent	c.f. UKCA 2006 s.239(6)(a)		New provision. See Position in CB for cl. 490.
511	This Division does not affect operation of other Ordinance or law	CO s.163D(5)	It provides that ss.163A, 163B and 163C shall not prejudice the operation of any rule of law which requires disclosure of payments to directors.	Existing law.
Subdivision 2 : Prohibitions				
512	Company must not make payment for loss of office to director or former director	CO s.163 c.f. UKCA 2006 s.217(1), (2) & (4)	S.163 deals with the situation where the payment for loss of office is made by a company to its directors and provides that such payment is unlawful without prior approval by members of the company.	Existing law with the following modifications and new provisions – (a) the requirement for members' approval for loss of office payment is extended to include payment by a company to a director or former director of its holding company (cl. 512(2)); and

Clause	Contents	Derivation	Position in CO	Position in CB
				(b) new provisions under cl. 512(3) allow exemptions from the requirement to obtain members' approvals in cl. 512(2) (see Position in CB for cl. 491(3)).
513	Person must not make payment for loss of office to director or former director in connection with transfer of company's undertaking or property	CO s.163A(1) & s.163D(1) c.f. UKCA 2006 s.218(1), (2), (4) & (5)	(a) S.163A(1) deals with the situation where the payment for loss of office to a company's directors is made by the company or a third party in connection with a transfer of the whole or any part of the company's undertaking or property and provides that such payment is unlawful without prior approval by members of the company. (b) S.163D(1) sets out the situations where payments made pursuant thereto will be regarded as payments caught by ss.163A and 163B.	Existing law with the following modifications and new provisions – (a) the requirement for members' approval for loss of office payment to a director or former director of a company is extended to include payment in connection with a transfer of the undertaking or property of the company's subsidiary (cl. 513(2)); and (b) new provisions under cl. 513(4) allow exemptions from the requirement to obtain members' approval in cl. 513(2) (see Position in CB for cl. 491(3)).

Clause	Contents	Derivation	Position in CO	Position in CB
514	Person must not make payment for loss of office to director or former director in connection with transfer of shares resulting from takeover offer	CO s.163B(1), (3)(b) & (5) & s.163D(1) c.f. UKCA 2006 s.219(1), (5) to (7)	(a) S.163B(1) deals with the situation where the payment for loss of office to a company's directors is made by any person in connection with a transfer of shares as specified in s.163B(1) and imposes a duty on a director to take all reasonable steps to secure that particulars of the proposed payment are provided to members together with the notice of offer for shares, failing which the director is liable to a fine. (b) Approval by a meeting of the shareholders to whom the offer relates and of others holding shares of that class has to be obtained before the transfer of any shares in pursuance of the offer (s.163B(3)(b)).	Existing law with the following modifications – (a) the requirement for members' approval for loss of office payment to a director or former director of a company connected with a share transfer is extended to include payments in connection with all transfers of shares in the company or in its subsidiary resulting from a takeover offer (cl. 514(1)); (b) Offence where a director fails to take all reasonable steps to secure compliance with disclosure of particulars of the proposed payment is removed; and (c) new provisions under cl. 514(3) allow exemptions from the requirement to obtain members' approval in cl. 514(1) (see Position in CB for cl. 491(3)).

Clause	Contents	Derivation	Position in CO	Position in CB
Subdivision 3 : Exceptions to Subdivision 2				
515	Exception for payments in discharge of legal obligation etc.	CO s.163D(3)(b) c.f. UKCA 2006 s.220	S.163D(3)(b) provides that references in ss.163, 163A and 163B to loss of office payments do not include any bona fide payment by way of damages for breach of contract or by way of pension in respect of past services.	Existing law plus two new exceptions for payment in discharge of legal obligations and for payment by way of settlement or compromise under cl. 515(1)(a) & (c) respectively.
516	Exception for small payment	c.f. UKCA 2006 s.221		New provision which provides for an exception where the amount or value of payment plus the amount or value of any other relevant payment for loss of office to the director or former director, does not exceed \$20,000.
Subdivision 4 : Consequences of Contravention				
517	Interpretation	c.f. UKCA 2006 s.222(4) & (5)		New provision deals with the situation where more than one provision under cls. 512, 513 and 514 is breached.
518	Civil consequences of contravention of	c.f. UKCA 2006 s.222(1)	S.163 provides that a loss of office payment to director made by a company is unlawful without	New provisions providing for the holding in trust by the recipient of the payment and for indemnity

Clause	Contents	Derivation	Position in CO	Position in CB
	section 512		members' prior approval.	liability of directors who authorized the payment, in breach of cl. 512. This clarifies the consequences of breach of the section concerned and aligns with the civil consequences of cls. 519 and 520.
519	Civil consequences of contravention of section 513	CO s.163A(1) & (2) c.f. UKCA 2006 s.222(1)(b) & (2)	S.163A(1) provides that a loss of office payment to a director as described therein is unlawful without members' prior approval. The unlawful payment received by the director should be held by him in trust for the company (s.163A(2)).	Existing civil consequence of the recipient holding the payment in trust for the company plus new provisions providing for indemnity liability of directors who authorized the payment in breach of the section concerned (cl. 519(3) & (4)).
520	Civil consequences of contravention of section 514	CO s.163B(3) c.f. UKCA 2006 s.222(1)(b) & (3)	S.163B(3) provides that where there has been non-compliance with the requirement of disclosure under s.163B(1) or where the payment is made without prior approval, the payment is deemed to be held on trust by the director for the shareholders who have accepted the offer. The director shall bear the expenses incurred in distributing that sum	Existing law plus new provisions providing for indemnity liability of directors who authorized the payment in breach of the section concerned (cl 520(4) & (5)).

Clause	Contents	Derivation	Position in CO	Position in CB
			amongst those who have accepted the offer.	
Division 4 : Directors' Service Contract				
521	Interpretation	c.f. UKCA 2006 s.223(1) & s.251(3)		New provision. The definition of "director" in cl. 521(1) and the provision in cl. 521(2) on whether a holding company is a shadow director of its subsidiaries align with those for Divisions 2 and 3.
522	Service contract	c.f. UKCA 2006 s.227		New provision to define the expression "service contract".
523	Prescribed approval of members	c.f. UKCA 2006 s.188(2) & (5), s.224, s.239(3) & (4); and Commencement Order No. 3 Sch.3 para.6(2)		New provision which explains the reference in Division 4 to the prescribed approval of the members. Cl. 523 aligns with the provisions on prescribed approval in Divisions 2 and 3.
524	Preservation of effect of members'	c.f. UKCA 2006 s.239(6)(a)		New provision preserving the effect of members' unanimous consent. See Position in CB for cl. 490.

Clause	Contents	Derivation	Position in CO	Position in CB
	unanimous consent			
525	Company must not agree to director's long-term employment	c.f. UKCA 2006 s.188(1)(a), (2)(a), (3), (4) & (7); and Commencement Order No. 3 Sch.3 para.6(3)		New provision. Members' approval is required if the guaranteed term (defined in cl. 525(3)) of a director's employment with a company exceeds three years.
526	Civil consequences of contravention of section 525	c.f. UKCA 2006 s.189		New provision setting out the civil consequences of contravention.
Division 5 : Material Interests in Transaction, Arrangement or Contract				
527	Director must declare material interests	CO s.162 c.f. UKCA 2006 s.177(1), (3), (5) & (6)(c) & s.182(1), (3), (5) & (6)(c)	S.162 requires a director, who has a material interest, directly or indirectly, in a contract or proposed contract with the company that is of significance to the company's business, to disclose the nature of such interest at the earliest meeting of directors that is practicable.	Existing law with the following modifications and new provisions – (a) the ambit of disclosure is widened to cover “transactions” and “arrangements” instead of just “contracts” (cl. 527(1) and (2));

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>(b) for a public company, the ambit of disclosure is widened to include disclosure by a director of any material interest of his connected entities (cl. 527(2));</p> <p>(c) a director is required to disclose the “nature and extent” of the interest instead of just the “nature” of the interest (cl. 527(1) & (2)); and</p> <p>(d) new provisions in cl. 527(3) & (4)(b) requiring further declaration and providing for circumstances where the requirement to declare does not apply.</p>
528	Declaration to directors: timing	CO s.162(1) c.f. UKCA 2006 s.177(4) & s.182(4)	S.162(1) requires the declaration of interest to be made at the earliest meeting of the directors at which it is practicable for the director in question to do so.	Existing law plus new provisions under cl. 528(2) & (3) requiring the declaration in respect of interests in a proposed transaction to be made as soon as reasonably practicable and before the company enters into the

Clause	Contents	Derivation	Position in CO	Position in CB
				transaction and providing that failure to comply with cl. 528(1) & (2) does not affect the underlying duty to declare.
529	Declaration to directors: procedures	CO s.162(1) & (2) c.f. UKCA 2006 s.177(2), s.182(2), s.184 & s.185(2) to (4)	S.162(1) requires a director to declare interest at meeting of directors. Directors may declare their interest by providing to the company a general notice as described in s.162(2). Such a declaration will be deemed to be sufficient to satisfy the requirements of s.162. However, this deeming provision does not operate retrospectively, so the notice must be given before the date on which the question of entering into the contract is first considered by the company.	Existing law plus new provisions under cl. 529(1)(b), (2) to (6) relating to the requirements and procedures for declaration made by notice in writing or general notice.
530	Declaration to directors in case of company with sole director	c.f. UKCA 2006 s.186		New provision. This provision requires a sole director of a company that ought to have more than one director (for example, a public company under cl. 444) to formally record in writing a

Clause	Contents	Derivation	Position in CO	Position in CB
				declaration of the nature and extent of his interest in transaction, arrangement or contract as stipulated in cl. 527.
531	Application of Division to shadow director	c.f. UKCA 2006 s.187		New provision. The provisions of Division 6 relating to the duty of a director to declare an interest under cl. 527 also apply to a shadow director but with modifications as set out in cl. 531(2) & (3).
532	Offence	CO s.162(3) c.f. UKCA 2006 s.183	S.162(3) imposes a fine for non-compliance but provides that it shall be a defence if the person charged with the offence proves that he had no knowledge of the contract and that he could not reasonably have been expected to have had such knowledge.	Existing law with modification and new provisions as follows– (a) in respect of breach of cl. 527(1), the fine is raised from level 5 (CO s.162(3)) to level 6; (b) the offences for breach of cl. 527(2) & (3) are new; and (c) in respect of contravention of cl. 527(2), it is a statutory defence to establish that the person

Clause	Contents	Derivation	Position in CO	Position in CB
				charged has taken all reasonable steps to secure compliance (cl. 532(2)).
Division 6 : Miscellaneous				
533	Disclosure of management contract	CO s.162A c.f. UKCA 2006 s.237(2)(b), (3) to (7)	<p>It provides that where a company enters into a management contract with a person in respect of all or a substantial part of the company's business, other than a contract of service with a director or full-time employee, the annual directors' report must state the existence and duration of the management contract and the name of the interested director.</p> <p>A copy of the contract must be made available for inspection by the members of the company at each general meeting during the period of the management contract.</p> <p>In case of non-compliance, the company and every officer in default are liable to a fine.</p>	<p>Existing law with the following modifications and new provisions –</p> <p>(a) disclosure is widened to include the name of every shadow director interested in the contract and the nature and extent of every director's and shadow director's interest in the contract (cl. 533(2)(b));</p> <p>(b) if the contract is not in writing, a written memorandum setting out the terms of the contract should be kept available for inspection by members (cl. 523(3)(b)); and</p> <p>(c) new provisions relating to the keeping of documents available for inspection etc. in cl. 533(4) & (5).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
534	Right of member to inspect and request copy	CO s.162A(1)(b) c.f. UKCA 2006 s.237(8) & s.238	See Position in CO for cl. 533.	Existing law in so far as it relates to the duty of the company to make available for inspection copy of the contract in question (cl. 534(1)), with the following modifications and new provisions – (a) the written memorandum setting out the terms of the contract kept by the company must be open to inspection by members (cl. 534(1)); (b) a member of the company has a right to request for copy of the contract or memorandum (cl. 534(2) & (3)); and (c) new offence provisions for a company’s failure to provide the member with the copy requested (cl. 534(4)).
535	Contract with sole member	CO s.162B	It provides that a company that has only one member who is also a	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	who is also director		director of the company is required to record in a written memorandum the terms of any oral contract with the member. The requirement does not apply to contracts entered into in the company's ordinary course of business. Failure to comply does not affect the validity of the contract but the company and every officer in default are liable to a fine.	
536	Financial Secretary may amend certain sums or percentage figures	c.f. UKCA 2006 s.258(1) & (3)		New provision to provide the Financial Secretary with the power to amend by notice in Gazette sums of money and percentage figures specified under any provision of Division 2 or 3 (cl. 536(1)). However such a power to amend does not cover amendment of the amount of a fine (cl. 536(2)).
Schedule 10 : Transitional and Saving Provisions				
89 – 91	Transitional and saving arrangements	<u>Cl. 89</u> c.f. Commencement		New provisions to provide for transitional and saving arrangements in respect of the following –

Clause	Contents	Derivation	Position in CO	Position in CB
	for Part 11	<p>Order No. 3 Sch.3 para.10(1) to (3)</p> <p><u>Cl. 90</u> Commencement Order No. 3 Sch. 3 para. 12(1) & (4)</p> <p><u>Cl. 91</u> Commencement Order No. 3 Sch. 3 para. 14(2)</p>		<p>(a) a transaction specified in CO s.157HA(3)(a) but the applicable condition has not been satisfied before commencement of Division 2 of Part 11;</p> <p>(b) a loss of office or retirement specified in CO ss.163, 163A, 163B, 163C and 163D that occurred before commencement of Division 3 of Part 11; and</p> <p>(c) a contract specified in CO s.162B entered into before the commencement of cl. 535.</p>