《公司條例草案》委員會《公司條例草案》第 14 部一保障公司或成員權益的補救委員會審議階段修正案

下表載述政府當局就《公司條例草案》第 14 部("保障公司或成員權益的補救")(第 711 至 731 條)擬議提出的委員會審議階段修正案(修正案)。政府當局在擬訂這些修正案時,考慮了議員、各團體/代表及立法會法律顧問的意見。該些修正案的標示文本按數序排列載於**附件**,以供參閱。在附件內的中文標示文本只載有僅適用於中文版的修正案。有關附表 10("過渡性條文及保留條文")的修正案,我們稍後會一次過向法案委員會匯報。

本列表所採用的縮寫如下:

《公司條例》:《公司條例》(第32章) 法案委員會:《公司條例草案》委員會

修正案:委員會審議階段修正案

草案:《公司條例草案》 處長:公司註冊處處長

項目	有關事宜/ 條文	委員會審議階段修正案	備註
草案各部的一般修訂			
1		如任何文件須在"14 日"內交付 處長,時限應改為"15 日"。	• 有法案委員會委員關注,公司向處長交付某些文件 作登記或通知之用,14日的期限可能並不足夠,因 為就一些文件而言,《公司條例》所訂的交付期限 為15日。
			• 經審視後,政府當局同意把草案相關條文的 14 日期 限 劃 一 改 為 15 日 。 請 參 閱 立 法 會

項目	有關事宜/ 條文	委員會審議階段修正案	備註
			CB(1)357/11-12(01)號文件"政府當局對委員在二零 一一年十一月四日及十一日會議上提出有關第 4 及 5 部的事宜所作的回應"第 31 及 32 段。
			• 就第 14 部而言,我們建議據此修訂第 715 條。
第 14 部的其他修訂			
2	第 712 條 釋 義	在中文版本的第(1)(b)款,以"在 無遺囑的情況下"取代"如此"。	• 這是因應立法會法律顧問的意見,為令條文更清晰而提出的修正案。
3	第 720 條 釋 義	在中文版本,以"的錯失"取代"失責"。	• 這是因應立法會法律顧問的意見,為令條文與第717條一致而提出的修正案。
4	第 721 條 公司的成員或 有聯繫公司的 成員可提起序 介入法律程序	在第(1)款,以"court"取代 "Court"。	• 正如在立法會文件編號 CB(1)1295/11-12(01)"政府當局就二零一二年一月十三日會議採取關於《公司條例草案》第 14 部的跟進行動"的第 11 及 12 段所解釋,成員獲原訟法庭批予許可後可以提起的法律程序不應只限於原訟法庭的法律程序。有關修訂容許在任何具有司法管轄權的法院提起法律程序。
5	第 728 條 釋 義	加入"document (文件)"的定義及 參考第 826 條修訂"record (紀	• 正如在立法會文件編號 CB(1)1295/11-12(01)"政府當局就二零一二年一月十三日會議採取關於《公司條例草案》第 14 部的跟進行動"的第 15 段所提及,

項目	有關事宜/ 條文	委員會審議階段修正案	備註
		錄)"的定義。	我們檢視了"record (紀錄)"的定義,確保電子紀錄也包括在內。為一致起見,我們建議採用第 826 條中 "document (文件)"和"record (紀錄)"的定義。因此,在第 729 至 731 條的相關條文中加入了"document"。
6	第 889 條 罰款的運用	(I) 在 "record" 後 加 入 "or document"。	• 請參閱上列第 5 項。
		(II) 在第(4)(d)款"the person" 後,加入"or, if the person is not the applicant, the applicant"。	• 建議這項修正案是為明訂原訟法庭有權作出命令, 容許申請人(而其並非查閱紀錄的人)向任何其他人 披露資料。
		(III) 在 第 (4)(d) 款 "information" 後刪除 "or document"。	• 這屬草擬上的修改。"Information"應可涵蓋 "document"。
		(IV) 刪除第(6)(b)款。	• 廢除面值制度後,若有條文以成員已繳付股款的款額作為門檻,應予刪除。在無面值的環境中,同一類別的股份可以不同價格發行,但它們應有相同權利。第(6)(b)款的效果是同一類別的股份實際上可附有不同權利,視乎股份原本的發行價而定,因此與無面值制度並不一致。

項目	有關事宜/ 條文	委員會審議階段修正案	備註
		(V) 在中文版本的第(6)(a)款中以"最少"取代"不少於"。	• 這是因應立法會法律顧問的意見,為令條文與第(6)(c)條一致而提出的修正案。第 329(2)(b)(i)及(4)條會作類似修訂。
7	第 730 條 保密	(I) 將第(1)款分拆成第(1)及(1A)款,並區分獲授權查閱 紀錄的人以及向原訟法庭 申請查閱的成員(即申請 人)。	• 這項修正案旨在明訂查閱紀錄的人可向申請人披露資料。此外,正如在立法會文件編號 CB(1)1295/11-12(01)"政府當局就二零一二年一月 十三日會議採取關於《公司條例草案》第 14 部的跟 進行動"的第 18 段所提及,這項修正案亦旨在澄清 申請人及查閱紀錄的人兩者均受條文規限。
		(II) 在第(1A)、(2)及(3)款的 "information"後刪除"or document"。	• 請參閱上列第 6(III)項。
		(III) 在 第 (1) 及 (3) 款 的 "record" 後加入"or document"。	• 請參閱上列第 5 項。
		(IV) 在 第 (1A) 款 以 "a" 取 代 "another"。	• 這是草擬上的修改。
8	第 731 條法 律 專 業 保 密	在 "record" 後 加 入 "or document"。	• 請參閱上列第 5 項。

項目	有關事宜/ 條文	委員會審議階段修正案	備註
	權		
9	第 731A 條 Protection of personal data	這是新條文。	• 正如在立法會文件編號 CB(1)1295/11-12(01)"政府當局就二零一二年一月十三日會議採取關於《公司條例草案》第 14 部的跟進行動"的第 14 段所提及,這新條文重述《公司條例》第 152FE 條(條文並不授權任何人在違反《個人資料(私隱)條例》(第 486章)的情況下收集、保留或使用個人資料),以免生疑問。

財經事務及庫務局 公司註冊處 二零一二年四月十三日

712. 釋義

- (1) 凡—
 - (a) 某人在緊接去世前,是某公司成員,則在本分部中,提述公司成員,包括該人的遺產代理人;及
 - (b) 某人在緊接去世前,是某公司成員,則在本分部中,提述公司成員,包括憑藉該人的遺囑或 因該人在無遺囑的情況下去世而成為該公司的股份的受託人,或憑藉該遺囑或因該人如此在 無遺囑的情況下¹去世而享有該公司股份的實益權益的人。
- (2) 凡某人在緊接去世前,是某公司的前度成員,則在本分部中,提述公司的前度成員,包括該人的遺產代理人。
- (3) 就本分部而言,除非某人符合以下說明,否則該人不是某公司的前度成員
 - (a) 該人曾經是該公司成員,但已不再是該公司成員;及
 - (b) 該人在 2005 年 7 月 15 日或之後,不再是該公司成員。

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Item 2 / 第 2 項

715. Alteration of articles by order of Court

- (1) This section applies if a company's articles are altered by an order under section 714.
- (2) The alteration has the same effect, and this Ordinance applies to the articles, as if the alteration were made by a resolution of the company.
- (3) Despite anything in this Ordinance, the company has no power, without the leave of the Court, to alter the articles in a way that is inconsistent with the order.
- (4) Within 154^2 days after the order is made, the company must deliver an office copy of the order to the Registrar for registration.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

² Item 1 / 第 1 項

720. 釋義

在本分部中 —

不當行為 (misconduct)指欺詐、疏忽或違反責任,亦指在遵從任何條例或法律規則方面失責的錯失 3 ; **法律程序** (proceedings)指任何在法院司法管轄權範圍內的法律程序,但刑事法律程序除外。

³ Item 3 / 第 3 項

721. Member of company or of associated company may bring or intervene in proceedings

- (1) If misconduct is committed against a company, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, bring proceedings in respect of the misconduct before the court Court on behalf of the company.
- (2) If, because of misconduct committed against the company, a company fails to bring proceedings in respect of any matter, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, bring proceedings in respect of the matter before the court on behalf of the company.
- (3) If, because of misconduct committed against the company, a company fails to diligently continue, discontinue or defend proceedings, a member of the company or of an associated company of the company may, with the leave of the Court granted under section 722, intervene in the proceedings before the court for the purpose of continuing, discontinuing or defending those proceedings on behalf of the company.
- (4) The cause of action in relation to the proceedings under subsection (1) or (2) is vested in the company. Any of those proceedings must be brought in the name of, and the relief (if any) must be sought on behalf of, the company.
- (5) The right to continue, discontinue or defend any proceedings intervened in under subsection (3) is vested in, and the relief (if any) must be sought on behalf of, the company.
- (6) Subject to section 725, this Division does not affect any common law right of a member of a company, or a member of an associated company of a company, to bring proceedings on behalf of the company, or intervene in any proceedings to which the company is a party.
- (7) This section does not prevent a member of a company, or of an associated company of a company, from bringing proceedings in respect of the company, or intervening in any proceedings to which the company is a party, on the member's own behalf in respect of any personal right.

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⁴ Item 4 / 第 4 項

Companies Bill 《公司條例草案》

728. Interpretation

In this Division—

document (文件) has the meaning given by section 826(1);

record (紀錄) includes books and paper. has the meaning given by section 826(1).5

⁵ Item 5 / 第 5 項

729. Court may order inspection of records

- (1) On application by a required number of a company's members, the Court may make an order—
 - (a) authorizing a person who is the applicant or one of the applicants to inspect any record<u>or</u> documents⁶ of the company; or
 - (b) authorizing a person who is not the applicant or one of the applicants to inspect any record<u>or</u> documents⁶ of the company on behalf of the applicant or applicants.
- (2) The Court may make an order authorizing a person to inspect <u>a records or document</u>⁶ if it is satisfied that—
 - (a) the application is made in good faith; and
 - (b) the inspection is for a proper purpose.
- (3) If the Court makes an order authorizing a person to inspect <u>a record or documents</u>⁶, the person may, unless the Court otherwise orders, make copies of the record <u>or documents</u>⁶.
- (4) If the Court makes an order authorizing a person to inspect <u>a</u> record <u>or documents</u>⁶, it may make any other order that it thinks fit, including—
 - (a) an order requiring the company, or an officer of the company, to produce any record<u>or</u> documents⁶ to the person;
 - (b) an order specifying the record or documents that may be inspected by the person;
 - (c) an order requiring the applicant to pay the expenses reasonably incurred by the company in the inspection; and
 - (d) an order permitting the person <u>or, if the person is not the applicant, the applicant</u>⁷ to disclose any information—<u>or document</u>⁸ obtained as a result of the inspection to any other person specified in the order.
- (5) A person who complies with an order made under subsection (1) or (4) does not incur any civil liability by reason only of the compliance.
- (6) In this section, a reference to a required number of a company's members is a reference to—
 - (a) the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application; or
 - (b) the number of members that holds shares in the company on which there has been paid up an aggregate sum of at least \$100,000; or 9
 - (c) at least 5 members of the company.

⁵ Item 6(I) / 第 6(I)項

⁷ Item 6(II) / 第 6(II)項

⁸ Item 6(III) / 第 6(III)項

⁹ Item 6(IV) / 第 6(IV)項

729. 原訟法庭可命令查閱紀錄

- (1) 原訟法庭可應某公司達到所需數目的成員的申請,作出命令
 - (a) 授權申請人或(如有多於一名申請人)其中一名申請人查閱該公司的任何紀錄;或
 - (b) 授權並非申請人的人或(如有多於一名申請人)並非其中一名申請人的人,代表該申請人或該等申請人查閱該公司的任何紀錄。
- (2) 原訟法庭如信納
 - (a) 有關申請是真誠提出的;及
 - (b) 查閱有關紀錄是為正當目的而進行的,

則可作出上述命令,授權某人查閱該等紀錄。

- (3) 如原訟法庭作出上述命令,授權某人查閱有關紀錄,該人可複製該等紀錄,但如原訟法庭另有命令 則除外。
- (4) 如原訟法庭作出上述命令,授權某人查閱有關紀錄,它可作出它認為合適的任何其他命令,包括—
 - (a) 規定有關公司或其高級人員向該人出示任何紀錄的命令;
 - (b) 指明該人可查閱的紀錄的命令;
 - (c) 規定申請人支付有關公司因該項查閱而合理地招致的開支的命令;及
 - (d) 准許該人向命令指明的任何其他人披露因該項查閱而取得的任何資料或文件的命令。
- (5) 遵從根據第(1)或(4)款作出的命令的人,不會僅因遵從該命令而負上任何民事法律責任。
- (6) 在本條中,提述某公司達到所需數目的成員,即提述
 - (a) 於有關申請的日期當日,代表全體有權在該公司成員大會上表決的成員的表決權不少於<u>最少</u> 102.5%的數目的成員;
 - (b) 持有該公司已繳付股款的股份而所繳總額不少於\$100,000 的數目的成員;或(Note: This subclause is proposed to be deleted. See the English version of Clause 729 above. 註:本款建議删除。見上文英文版第729條)
 - (c) 最少5名該公司的成員。

⁰ Item 6(V) / 第 6(V)項

730. Preservation of secrecy

- (1) If, on application by one or more members of a company, the Court makes an order under section 729(1) authorizing a person to inspect <u>a record or documents</u>¹¹, the person <u>may disclose any information obtained as a result of the inspection to a person who is an applicant.</u>
- (1A) The authorized person, or the applicant to whom the information was disclosed, ¹² must not, without the company's prior consent in writing, disclose any information or document ¹³ obtained as a result of the inspection to another ¹⁴ person who is not an applicant.
 - (2) Despite subsection (1A), the <u>authorized person</u>, or the <u>applicant to whom the information was disclosed</u>, ¹² may disclose such information or document ¹³ to another person if the disclosure is—
 - (a) required with a view to the institution of, or otherwise for the purpose of, any criminal proceedings;
 - (b) permitted in accordance with an order made under section 729(1) or (4); or
 - (c) permitted in accordance with law or a requirement made under law.
- (3) If the Court makes an order under section 729(1) authorizing a person to inspect <u>a_records_or</u> <u>document</u>¹¹ the person, <u>or the applicant to whom the information was disclosed</u>¹² must not, unless the Court otherwise orders, use any information—<u>or document</u>¹³ obtained as a result of the inspection for any purpose other than the purpose for which the inspection is applied for.
- (4) A person who contravenes subsection $(1\underline{A})$ or (3) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

¹¹ Item 7(III) / 第 7(III)項

¹² Item 7(I) / 第 7(I)項

¹³ Item 7(II) / 第 7(II)項

¹⁴ Item 7(IV) / 第 7(IV)項

731. Legal professional privilege

Section 729, or an order made under it, does not authorize a person to inspect any record<u>or documents</u>¹⁵ containing information that is subject to legal professional privilege.

¹⁵ Item 8 / 第 8 項

Companies Bill 《公司條例草案》

731A. Protection of personal data

To avoid doubt, sections 729 and 730, or an order made under section 729, do not authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486). 16