

**《公司條例草案》委員會
《公司條例草案》第 10 部—董事及公司秘書
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 10 部(“董事及公司秘書”)(第 444 至 474 條)擬議提出的委員會審議階段修正案。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。該等修正案的標示文本按數序排列，現載於附件以供參閱。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：

法案委員會：《公司條例草案》委員會
 草案：《公司條例草案》
 《公司條例》：《公司條例》(第 32 章)
 修正案：委員會審議階段修正案
 處長：公司註冊處處長

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
草案各部的一般修訂			
1	把向處長交付文件的時限由“14 日”修訂	如任何文件須在“14 日”內交付處長，時限應修訂為“15 日”。	<ul style="list-style-type: none"> 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

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
	為“15日”		<p>交付期限為15日。</p> <ul style="list-style-type: none"> 經檢討後，政府當局同意把草案相關條文所述的14日期限劃一修訂為15日。請參閱立法會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至32段。 就第10部而言，我們建議據此修訂第462(4)條。
第10部的其他修訂			
2	第449條 規定公司委任董事的指示	<p>(I) 加入第(2A)款，訂明遵從處長所發出指示的期限(處長發出指示的日期後的一個月至三個月內)。</p> <p>(II) 加入第(2B)款，訂明處長可延長遵從指示的期限，並相應修訂第(3)款。</p>	<ul style="list-style-type: none"> 這項修正案是因應議員的建議而提出的，旨在就公司遵從處長所發出指示的期限，提供明確指引。請參閱立法會CB(1)1184/11-12(02)號文件“政府當局就二零一一年十二月二日會議採取關於《公司條例草案》第10部的跟進行動”第3段。 既然第(2A)款已訂明公司遵從處長所發出指示的期限，我們認為，容許處長針對公司確實難以在所訂期限內遵從指示的個案，按需要延長期限，是合適的做法。類似條文亦見於草案第103(4)、104(4)及759(3)條。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		(III) 刪除第(2)(c)款中的“the consequence of failing to comply with it”一句，代之以“that a failure to comply with the direction is an offence under subsection (4)”。	<ul style="list-style-type: none"> 提出這項修正案，旨在使文意更為清晰。經修訂的條文述明，沒有遵從指示即屬犯罪。
		(IV) 在第(4)款中，以“fails to comply with”取代“contravenes”。	<ul style="list-style-type: none"> 提出這項草擬方式的修改，旨在使條文的用語與第(3)款一致。請參閱立法會 CB(1)1184/11-12(02)號文件“政府當局就二零一一年十二月二日會議採取關於《公司條例草案》第 10 部的跟進行動”第 2 段。
3	第 453 條 罷免董事的決議	(I) 刪除“holding office for life on the commencement of the Companies (Amendment) Ordinance 1984 (6 of 1984)”一句，代之以“who has held office for life since 31 August 1984”。	<ul style="list-style-type: none"> 提出這項草擬方式的修改，旨在述明《1984 年公司(修訂)條例》的生效日期。
		(II) 在第(4)款加入附註，促使讀	<ul style="list-style-type: none"> 由於政府當局建議刪除第 2 條中有關“特別通

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		者注意第 568 條。	知”的指向性定義，我們認為加入附註，促使讀者注意第 568 條，更為合適。請參閱草案第 1 部的擬議修正案。
4	第 454 條 董事抗議罷免 的權利	(I) 修改第(3)、(4)及(5)款的草擬方式。	<ul style="list-style-type: none"> 我們注意到，第 454 條及第 9 部第 413 條(關乎成員大會的停任陳述及出席成員大會)就同類事宜作出規定。為求一致，我們會就這兩條條文提出修正案，以劃一用語。我們亦會趁機修改第(3)、(4)及(5)款的草擬方式，但條文的實質內容不會改變。
		(II) 加入 “using the rights to secure needless publicity for defamatory matter”，作為原訟法庭根據第(6)款作出命令的理據，並修改條文的草擬方式。	<ul style="list-style-type: none"> 這項修正案是因應議員的關注而提出的，旨在明確指出 “using the rights to secure needless publicity for defamatory matter”，可作為原訟法庭根據第(6)款作出命令的理據。《公司條例》的相應條文(第 157B(4)條)亦載列同一理據。此外，我們會就第 413、414、418、544 及 573 條提出類似的修正案，並會趁機修改有關條文的草擬方式。
		(III) 刪除原本的第(6)款。	<ul style="list-style-type: none"> 議員關注原本的第(6)款會否影響《高等法院條例》(第 4 章)的施行。經檢討後，我們建議刪除原本的第(6)款，而有關事宜會由《高等法院條例》

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		(IV) 加入第(7)款。	(第4章)及《高等法院規則》規管。 • 議員關注，沒有條文述明不遵從第454條的規定有何後果。因應議員的關注，我們建議加入第(7)款，訂明如公司違反相關規定，根據第453(1)通過的決議即屬無效。請參閱立法會CB(1)1184/11-12(02)號文件“政府當局就二零一一年十二月二日會議採取關於《公司條例草案》第10部的跟進行動”第5至7段。
5	第456條 有責任以合理水平的謹慎、技巧及努力行事	(I) 在第(6)款中，以“by reason only that”取代“only because”。	• 議員建議劃一第(6)款和第482(2)條的用語，這項草擬方式的修改是因應建議而提出的。請參閱立法會CB(1)1490/11-12(01)號文件“政府當局就二零一一年十二月二日及九日會議採取關於《公司條例草案》第11部的跟進行動”第4段。
		(II) 在中文版第(6)款中，以“不會”取代“並不”。	• 這項草擬方式的修改是因應立法會法律顧問的建議而提出的，使文意更為清晰。
6	第460條 獲准許的彌償條文	加入第(2)(b)(iiia)款。	• 提出這項修正案，旨在反映我們的政策原意，即若有關公司的有聯繫公司的成員或與該有聯繫公司相聯的公司的成員代該有聯繫公司提起民事法律程序，彌償條文不得就董事因在該法律程

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
			序中作抗辯而招致的法律責任提供彌償。
7	第 464 條 涉及疏忽等的 董事行為的追 認	在第(5)款中，以“former”取代 “past”。	<ul style="list-style-type: none"> 提出這項草擬方式的修改，使條文與草案其他條文(例如第 11 部的第 477、478 及 479 條)的用語一致。
8	第 467 條 規定公司委任 公司秘書的指 示	(I) 加入第(2A)款，訂明遵從處 長所發出指示的期限(處長 發出指示的日期後的一個月 至三個月內)。	<ul style="list-style-type: none"> 請參閱上文第 2(I)項。
		(II) 加入第(2B)款，訂明處長可 延長遵從指示的期限，並相 應修訂第(3)款。	<ul style="list-style-type: none"> 請參閱上文第 2(II)項。
		(III) 刪除第(2)(c)款中的“the consequence of failing to comply with it”一句，代之 以“that a failure to comply with the direction is an offence under subsection	<ul style="list-style-type: none"> 請參閱上文第 2(III)項。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		(4)”。	
		(IV) 在第(4)款中，以“fails to comply with”取代“contravenes”。	<ul style="list-style-type: none"> 請參閱上文第 2(IV)項。
9	第 472 條 董事會議的紀錄	在第(2)款中，以“10 years”取代“20 years”。	<ul style="list-style-type: none"> 一如立法會 CB(1)1277/11-12(01)號文件“政府當局就二零一一年十二月十六日及二零一二年一月六日會議採取關於《公司條例草案》第 12 部的跟進行動”第 30 至 31 段所述，我們擬把第 608 條中備存決議及會議等的紀錄的期限由 20 年改為 10 年。這項修正案是因應第 608 條的修訂而提出的。
10	第 474 條 關於私人公司 唯一董事的決定的書面紀錄	在第(3)款中，以“10 years”取代“20 years”。	<ul style="list-style-type: none"> 請參閱上文第 9 項。

財經事務及庫務局
公司註冊處
 二零一二年五月二日

449. Direction requiring company to appoint director

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

¹ Item 2(I) / 第 2(I)項

² Item 2(III) / 第 2(III)項

³ Item 2(II) / 第 2(II)項

⁴ Item 2(IV) / 第 2(IV)項

453. Resolution to remove director

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

Note—

See also section 568.⁶

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

⁵ Item 3(I) / 第3(I)項

⁶ Item 3(II) / 第3(II)項

454. Director's right to protest against removal

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

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

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

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

~~(4) The steps are—~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷ Item 4(I) / 第4(I)項

⁸ Item 4(II) / 第4(II)項

⁹ Item 4(IV) / 第4(IV)項

¹⁰ Item 4(III) / 第4(III)項

456. Duty to exercise reasonable care, skill and diligence

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

¹¹ Item 5(I) / 第 5(I)項

456. 有責任以合理水平的謹慎、技巧及努力行事

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

¹² Item 5(II) / 第 5(II)項

460. Permitted indemnity provision

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

¹³ Item 6 / 第 6 項

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

- (1) This section has effect if a permitted indemnity provision is made for a director of a company, and applies—
 - (a) to that company (whether the provision is made by that company or an associated company of that company); and
 - (b) if the provision is made by an associated company, to that associated company.
- (2) A company to which this section applies must keep the following available for inspection at its registered office or at a place prescribed by regulations made under section 648—
 - (a) a copy of the permitted indemnity provision;
 - (b) if the provision is not in writing, a written memorandum setting out the terms of the provision.¹⁴
- (3) The company—
 - (a) must retain the copy or memorandum for at least one year after the date of termination or expiry of the provision; and
 - (b) must keep the copy or memorandum available for inspection during that time.
- (4) If the copy or memorandum is kept available for inspection¹⁴ at a place other than the company's registered office, the company must notify the Registrar of the place, or any change in the place, at which the copy or memorandum is kept. The notice must be in the specified form and delivered to the Registrar for registration within ~~15~~¹⁴ days after the copy or memorandum is first kept at that place or within ~~15~~¹⁴ days after the change (as the case may be).
- (5) If a company contravenes subsection (2), (3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (6) In this section, a reference to a permitted indemnity provision includes a variation of the provision.

¹⁴ Item 1 / 第 1 項

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

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

¹⁵ Item 7 / 第 7 項

467. Direction requiring company to appoint company secretary

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

¹⁶ Item 8(I) / 第 8(I)項

¹⁷ Item 8(III) / 第 8(III)項

¹⁸ Item 8(II) / 第 8(II)項

¹⁹ Item 8(IV) / 第 8(IV)項

472. Minutes of directors' meetings

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

²⁰ Item 9 / 第9項

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

- (1) If a private company has only one director and the director takes any decision that—
 - (a) may be taken in a meeting of directors; and
 - (b) has effect as if agreed in a meeting of directors,the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.
- (2) If the director provides the company with a written record of a decision in accordance with subsection (1), that record is sufficient evidence of the decision having been taken by the director.
- (3) A company must keep a written record provided to the company in accordance with subsection (1) for at least 2010²¹ years from the date of the decision.
- (4) A director who contravenes subsection (1) commits an offence.
- (5) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence.
- (6) A person who commits an offence under subsection (4) is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (7) A person who commits an offence under subsection (5) is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (8) A contravention of subsection (1) by a director does not affect the validity of any decision mentioned in that subsection.

²¹ Item 10 / 第 10 項