

《公司條例草案》委員會
《公司條例草案》委員會審議階段修正案 — 雜項

下表載述政府當局就《公司條例草案》就各部擬議提出的雜項委員會審議階段修正案(修正案)。該些修正案部分為議員未曾考慮的新修正案，部分是法案委員會已作討論而當局須作進一步實質跟進的修正案。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。

本列表所採用的縮寫如下：

《公司條例》：《公司條例》(第 32 章)修正案：委員會審議階段修正案

法案委員會：《公司條例草案》委員會

草案：《公司條例草案》

| 項目 | 有關事宜／ 條文 | 擬議的 委員會審議階段修正案 | 備註 |
|----------------------------------|--|-------------------|--|
| 第 1 部：導言 | | | |
| 1 | 第 7 條 股份有限公司 | 加入第(2)款。 | <ul style="list-style-type: none"> 這是技術修訂。任何公司的章程大綱如載有按照附表 1 內的 B 表所列格式的第 4 段所述條件(該條訂明“成員的法律責任是有限的”)，該公司即當作符合《公司條例》第 4(2)(a)條的定義，屬股份有限公司。我們有需要提出這項修正案，否則這類公司不能符合草案第(1)款，並不會符合“股份有限公司”的定義。 |
| 第 3 部：公司組成及相關事宜，以及公司的重新註冊 | | | |
| 2 | 新增的第 69A 條 Copies of incorporation form to be | 新增條文。 | <ul style="list-style-type: none"> 公司成員有權要求公司提供章程細則文本(見下列第 4 項)。我們認為有關權利亦應適用於法團成立表格。 |

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| | provided to members | | |
| 3 | 新增的第 91A 條 Copies of articles to be provided to members | 新增條文。 | <ul style="list-style-type: none"> 重述現行法例(《公司條例》第 26 條)，並作出修訂，訂明公司須免費向成員提供章程細則文本。 |
| 第 11 部：董事的公平處事 | | | |
| 4 | 第 529 條 向董事作出的申報：程序 | <p>在第(1)款中刪除“to the other directors”，並修訂第(6)款和加入第(7)及(8)款如下 –</p> <p>“(6)A general notice <u>must be given</u>—is not effective unless—</p> <p>(a) it is given—at a directors’ meeting; or</p> <p>(b) the director takes all reasonable steps to secure that it is brought up and read at the next directors’ meeting after it is given in writing and sent to the company.</p> | <ul style="list-style-type: none"> 在二零一二年五月二十二日的法案委員會會議上，有意見認為，董事在申報利害關係時向公司作出一般通知已經足夠。就此，草案的相關規定是參考英國《2006 年公司法》第 182(2)、184 及 185 條。在英國國會曾有類似提議，指若公司有公司秘書，向公司秘書發出通知已經足夠。不過，當時最終認為通知公司秘書並不足夠，董事需知道其他董事申報的利害關係。他們不接受董事就申報通知其他董事的要求過於嚴苛。縱然董事可藉通知公司秘書申報利害關係，該董事有責任確保有關通知會送交其他董事。 如委員認為董事藉向公司發出一般通知申報利害關係已經足夠，建議中的修正案已反映有關建議。公司必須將該一般通知送交其他董事，如有違反即屬犯罪(見下列第 5 項)。 |

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| | | <p><u>(7) A general notice given under subsection (6)(a) takes effect on the date of the directors' meeting.</u></p> <p><u>(8) A general notice given under subsection (6)(b) takes effect on the twenty-first day after the day on which the it is sent to the company.”</u></p> | |
| 5 | <p>新增的第 531A 條</p> <p>Companies must send general notices to other directors</p> | <p>新增條文。</p> | <ul style="list-style-type: none"> 這是因應對第 529 條建議的修正案而提出的。見上列第 4 項。 |
| 第 12 部：公司管理及議事程序 | | | |
| 6 | <p>第 547 條</p> <p>由屬股份的聯名持有人的合資格成員表示的同意</p> | <p>修訂第(1)及(2)款如下－</p> <p>“(1) If—</p> <p>(a) 2 or more eligible members are joint holders of shares of a company;</p> | <ul style="list-style-type: none"> 這時因應委員的建議而提出的。在聯名持有人的情況，如其中任何持有人已表示同意被提出的書面決議，<u>而並沒有排名較高的持有人提出反對</u>，則所有其他持有人須視為已表示同意。這規定受公司章程細則規限。 |

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| | | <p>and</p> <p>(b) any holder senior holder has signified theirhisor her agreement to a proposed written resolution; <u>and</u></p> <p><u>(c) if the company</u> <u>has received, before</u> <u>the end of the period</u> <u>mentioned in section</u> <u>548(1), any objection</u> <u>to the proposed</u> <u>written resolution</u> <u>from any other</u> <u>holder, the holder</u> <u>who has signified the</u> <u>agreement is more</u> <u>senior than the holder</u> <u>who has made the</u> <u>objection,</u></p> <p>then the other joint holder</p> | |

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| | | <p>or holders are to be regarded as having signified their agreement to the proposed written resolution for the purposes of section 546(1).</p> <p>(2) For the purposes of this section, the <u>seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members of the company.</u>”</p> | |

其他相關事宜

(1) 第 174(2)(b)條

法案委員會在二零一二年四月三十日會議上討論有關刪除第 174(2)(b)條下公司董事報告必須載有“無表決權”中文字樣或“non voting”英文字樣的規定的擬議修正案時，議員問及其他地區是否亦有類似的規定。

草案第 174(2)(b)條重訂《公司條例》第 57A(1)條。該條訂明公司股本如分為不同類別的股份，而其中某個類別的股份(被稱為優先股或有優先權的股份者除外)，其持有人在公司的大會中並無權表決，則該類別股份的說明稱號須包括“無表決權”的中文字樣或“non voting”的文字，而該等字樣或文字須清楚地載於公司所發出的董事報告書上。

根據我們的所得資料，英國《2006年公司法》、澳洲《法團法》及新加坡《公司法》並無類似的規定。

(2) 第 544 條

在二零一二年五月二十二日的法案委員會會議上，就《公司條例》第 115A(5)條(草案第 544(1)(b)條參考該條文)中“以取得誹謗性質的事宜上不必要的宣傳”的表述，委員問及是否有資料顯示當時的立法原意。就此，《公司條例》第 115A 條經《公司(修訂)條例》(1984 年第 6 號)第 79 條引入。第 79(5)條是參考英國《1948 年公司法》第 140(5)條制訂。相關摘要說明並沒有就加入第 115A 條的原因提供很多資料。我們亦未能找到在香港或英國有關“不必要的宣傳”的表述的案例。

財經事務及庫務局

公司註冊處

二零一二年五月二十五日

Companies Bill
《 公司條例草案 》

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7. Company limited by shares

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

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

¹ Item 1 / 第 1 項

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

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

² Item 2 / 第 2 項

91A. Copies of articles to be provided to members

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

³ Item 3 / 第 3 項

529. Declaration to directors: procedures

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

⁴ Item 4 / 第4項

Companies Bill
《 公司條例草案 》

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

⁵ Item 4 / 第4項

531A. Companies must send general notices to other directors

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

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

⁶ Item 5 / 第 5 項

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

(1) If—

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

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

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

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

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

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

⁷ Item 6 / 第 6 項