

# 立法會

## *Legislative Council*

LC Paper No. LS66/11-12

### **Bills Committee on Companies Bill**

At the meeting on 4 May 2012, the Bills Committee deliberated on the offence provisions in the Companies Bill (CB) as listed in Annex A to the Administration's paper relating to alignment of penalties for offences under the CB (LC Paper No. CB(1)1490/11-12(02)). The Chairman stated at the meeting that Members may consider the list of offence provisions in accordance with the following criteria:

- (a) whether the provision involves a listed company only;
- (b) whether the provision may involve the protection of minorities' rights;
- (c) whether the provision relates to the keeping of proper records by a company having only one member/director; and
- (d) whether the provision is a new provision concerning publication of a notice.

The Legal Service Division was requested to review the offences listed in Annex A and advise the Bills Committee on whether the offences met any of the criteria.

2. Column 2 of the Appendix sets out the Legal Service Division's opinion on the general categorization of the offence provisions in accordance with the Chairman's criteria as above stated.

3. Whether there should be a daily default fine for the relevant offences under the CB is a policy matter for Members to decide.

Encl.

Prepared by  
Legal Service Division  
Legislative Council Secretariat  
17 May 2012

## Appendix

<b>Offence provision in the CB</b>	<b>Chairman's criteria</b>	<b>General description of the offence</b>
<b>Part 4 – Share Capital</b>		
Clause 161(2)	(a)	<ul style="list-style-type: none"><li>• Listed company failing to publish in the Gazette a notice of the issue of the new certificate and cancellation of the original certificate; and deliver a copy of the notice to the recognized stock market concerned within the prescribed time.</li></ul>
<b>Part 5 – Transactions in relation to Share Capital</b>		
Clause 213(3)	(b), (d)	<ul style="list-style-type: none"><li>• Company failing to publish a notice about the particulars of a proposed reduction of share capital in the Gazette within the prescribed time. (in respect of clause 213(1))</li><li>• Company failing to comply with the requirement either to publish a notice about the particulars of a proposed reduction of share capital in newspapers or give written notice to that effect to creditors within the prescribed time. (in respect of clause 213(2))</li></ul>
Clause 256(3)	(b), (d)	<ul style="list-style-type: none"><li>• Company failing to publish a notice about the particulars of a proposed payment out of capital in the Gazette within the prescribed time. (in respect of clause 256(1))</li><li>• Company failing to comply with the requirement either to publish a notice about the particulars of a proposed payment out of capital in newspapers or give written notice to that effect to creditors within the prescribed time. (in respect of clause 256(2))</li></ul>
Clause 279(5)	(b)	<ul style="list-style-type: none"><li>• Company failing to send to its member a copy of the solvency statement and a notice containing prescribed information about the giving of financial assistance within the prescribed time.</li></ul>
<b>Part 9 – Accounts and Audit</b>		
Clause 372(5)	(b)	<ul style="list-style-type: none"><li>• Company failing to adequately record information contained in accounting records. (in respect of clause 372(1))</li></ul>

Offence provision in the CB	Chairman's criteria	General description of the offence
Clause 372(5)		<ul style="list-style-type: none"> <li>• Company failing to reproduce in hard copy form the accounting records that are kept in electronic form. (in respect of clause 372(3))</li> </ul>
		<ul style="list-style-type: none"> <li>• Company failing to take adequate precaution and steps to guard against, and facilitate the discovery of, falsification of accounting records. (in respect of clause 372(4))</li> </ul>
Clause 416(4)	(b)	<ul style="list-style-type: none"> <li>• A retiring auditor not reappointed, or an auditor removed from office, failing to give the company on termination of his appointment a statement of circumstances/ no circumstances that should be brought to the attention of members or creditors. (in respect of clause 416(1))</li> </ul>
		<ul style="list-style-type: none"> <li>• A retiring auditor not reappointed or an auditor removed from office failing to send to the company a statement of circumstances/ no circumstances in clause 416(1) so that it will be received by the company within the specified time. (in respect of clause 416(2))</li> </ul>
<b>Part 10 – Directors and Company Secretaries</b>		
Clause 462(5)	(b)	<ul style="list-style-type: none"> <li>• Company failing to keep available for members' inspection copy of permitted indemnity provision or memorandum thereof at the prescribed places. (in respect of clause 462(2))</li> </ul>
		<ul style="list-style-type: none"> <li>• Company failing to retain and keep for members' inspection copy of permitted indemnity provision or memorandum thereof for at least one year after the date of termination or expiry of the permitted indemnity provision. (in respect of clause 462(3))</li> </ul>
Clause 463(4)(a)	(b)	<ul style="list-style-type: none"> <li>• Company failing to provide a member of the company upon request with a copy of the permitted indemnity provision or memorandum thereof within the prescribed time.</li> </ul>
Clause 474(6)	(c)	<ul style="list-style-type: none"> <li>• Sole director of a company failing to provide the company with a written record of any of his decision that may be taken in a directors' meeting and has effect as if agreed in such meeting. (in respect of clause 474(4))</li> </ul>

Offence provision in the CB	Chairman's criteria	General description of the offence
<b>Part 11 – Fair Dealings by Directors</b>		
Clause 533(6)	(b)	<ul style="list-style-type: none"> <li>• Company failing to include in the director’s report for the relevant year a statement of the existence and duration of a management contract and the name of every director and shadow director interested in the contract, and the nature and extent of the interest. (in respect of clause 533(2))</li> <li>• Company failing to keep available for inspection at a prescribed place a copy of the management contract; or a written memorandum setting out the terms of the contract if the contract is not in writing. (in respect of clause 533(3))</li> <li>• Company failing to retain and keep available for members’ inspection copy of a contract by which a person undertakes the management and administration of the whole or any substantial part of any of the company’s business or memorandum thereof for at least one year after the date of termination or expiry of the contract. (in respect of clause 533(4))</li> </ul>
Clause 534(4)(a)	(b)	<ul style="list-style-type: none"> <li>• Company failing to provide to a member of the company upon request with a copy of the contract or memorandum thereof within the prescribed time.</li> </ul>
Clause 535(3)	(c)	<ul style="list-style-type: none"> <li>• Company failing to ensure that the terms of a contract with its sole member who is also a director are set out in a written memorandum and the memorandum be kept at the prescribed place.</li> </ul>
<b>Part 12 – Company Administration and Procedure</b>		
Clause 584(2)	(b)	<ul style="list-style-type: none"> <li>• Company failing to record in the minutes of proceedings of a general meeting the prescribed results of each resolution decided on a poll.</li> </ul>
Clause 607(3)	(c)	<ul style="list-style-type: none"> <li>• Sole member failing to provide the company with a written record of any decision made by him within the prescribed time.</li> </ul>
Clause 646(5)	(b)	<ul style="list-style-type: none"> <li>• Company failing to adequately record the required information in company records. (in respect of clause 646(1))</li> </ul>
		<ul style="list-style-type: none"> <li>• Company failing to ensure that the company records that are kept in electronic form are capable of being reproduced in hard copy form. (in respect of clause 646(3))</li> </ul>

Offence provision in the CB	Chairman's criteria	General description of the offence
Clause 647(2)	(b)	<ul style="list-style-type: none"> <li>Company failing to take adequate precaution and steps to guard against, and facilitate the discovery of, falsification of company records.</li> </ul>
Clause 651		<ul style="list-style-type: none"> <li>Company failing to disclose company name etc. in accordance with the requirements prescribed by the Financial Secretary in regulations.</li> </ul>
<b>Part 16 – Non-Hong Kong Companies</b>		
Clause 780(8)		<ul style="list-style-type: none"> <li>Non-Hong Kong company failing to exhibit its names and place of incorporation on every place it carries on business in Hong Kong and (if applicable) conspicuously exhibit a notice of the fact that the liability of its members is limited. (in respect of clause 780(2))</li> </ul>
<b>Part 18 – Communications to and by Companies</b>		
Clause 825(3)	(b)	<ul style="list-style-type: none"> <li>Company failing to provide a document or information in hard copy form as requested by its member or debenture holders within the prescribed time.</li> </ul>
<b>Part 20 - Miscellaneous</b>		
Clause 884(3)		<ul style="list-style-type: none"> <li>A person who is not incorporated with limited liability using, trading or carrying on business under a name or title of which (a) the word “Limited”, or a contraction or imitation of that word, is the last word; (b) the Chinese version of the word “Limited”, or of a contraction or imitation of that word, is the last word; or (c) the Chinese characters “有限公司” form part. (in respect of clause 884(1))</li> </ul>
		<ul style="list-style-type: none"> <li>A person who is not incorporated using, trading or carrying on business under a name or title of which (a) the word “Corporation” or “Incorporated”, or a contraction or imitation of that word, is the last word; (b) the Chinese version of the word “Corporation” or “Incorporated”, or of a contraction or imitation of that word, is the last word; or (c) the Chinese characters “註冊公司” or “法人團體” form part. (in respect of clause 884(2))</li> </ul>