

Bills Committee on Companies Bill

**Comparison Table for Part 2 –
Registrar of Companies and Companies Register**

PURPOSE

To facilitate clause-by-clause examination of Part 2 (Registrar of Companies and Companies Register) of the Companies Bill, this paper provides a comparison table, at **Annex**, on the provisions in Part 2 and relevant provisions in the Companies Ordinance (Cap. 32) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 2 are set out in section 2 of Schedule 10.

PART 2 OF THE CB

2. The major proposals and policy issues concerning Part 2 are set out in Annex A to LegCo Paper No. CB(1)1879/10-11(03), which was considered by Members at the meeting of 18 April 2011. Members did not raise any specific issues for the Administration to follow up.

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
20 July 2011**

Comparison Table for Part 2

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 –

ACA: Australia Corporations Act 2001

CO: Companies Ordinance (Cap. 32)

SCA: Singapore Companies Act

UKCA 2006: United Kingdom Companies Act 2006

UK DA Reg: The Companies (Disclosure of Address) Regulations 2009

| Clause | Contents | Derivation | Notes |
|---|---------------------|--|---|
| Division 1: Preliminary | | | |
| 19 | Interpretation | CO s. 2(1), s.168BAA(3) and s. 346(5) | Existing law plus definitions of “company” to include a registered non-Hong Kong company and “document” to include a document in electronic form or any other form to extend the coverage of Part 2 as appropriate. |
| Division 2: Registrar of Companies | | | |
| 20 | Office of Registrar | CO s. 303 | Existing law. |

| Clause | Contents | Derivation | Notes |
|---------------|--|--|--|
| 21 | Registrar's functions | c.f. UKCA 2006 s. 1061(1) | New provision to state the functions of the Registrar of Companies ("Registrar"). |
| 22 | Registrar may specify form | CO s. 2A | Existing law but with a clarification that existing section 2A(1)(b) covers both matters in clause 22(2) (exceptions to the Registrar's power to specify form). |
| 23 | Registrar may issue guidelines | Financial Reporting Council Ordinance (Cap. 588) s. 13(1), (3), (4) & (5) c.f. UKCA 2006 s. 1117(3) | New provision to empower the Registrar to issue guidelines to provide guidance on the operation of any provision in the CB. There is no such provision in the CO at present though the Registrar issues guidelines as an administrative measure. |
| 24 | Registrar may authenticate document etc. | CO s. 305(3B) and s. 305A | Existing law. |
| 25 | Fees payable to Registrar | CO s. 304(2) & (4) Trading Funds Ordinance (Cap. 430), s. 5 | Existing law plus new provisions replacing the table of fees set out in the Eighth Schedule to the CO by regulations to be made by the Financial Secretary (subclauses (1) & (2)). |

| Clause | Contents | Derivation | Notes |
|---------------------------------------|--|---|--|
| | | c.f. UKCA 2006 s. 1063(1), (3) & (5) | |
| Division 3: Companies Register | | | |
| 26 | Registrar must keep records of companies | CO s.348D(1), (2) & (3) c.f. UKCA 2006 s. 1080(1), (4) & (5) UK The Companies Act 2006 (Commencement No.8 Transitional Provisions and Savings) Order 2008, paragraph 32 of Schedule 2 | Existing law plus new provisions. The current CO does not expressly impose a duty on the Registrar to keep records of documents delivered to the Companies Registry. This clause consolidates the existing provisions and expressly provides for the Registrar’s duty to keep records of companies. There are also provisions that provide for – (a) the Registrar to continue to keep the register of companies under the predecessor Ordinance (subclause (2)); and (b) a definition of “specified address”. The new term is used for transitional purposes such that existing residential addresses of directors and company secretaries on the register will be recorded as correspondence or residential addresses as appropriate after the CB’s commencement (subclauses (6), (9) & (10)). |

| Clause | Contents | Derivation | Notes |
|---|---|---|--|
| 27 | Registrar not required to keep certain documents etc. | CO s. 348B c.f. UKCA 2006 s. 1087(3) | Existing law plus new provisions. CO is silent on how the Registrar should handle a record of information not required to be made available for public inspection. This clause adds a new provision to clarify that the Registrar is not required to keep such information for longer than necessary(subclause (3)). |
| 28 | Registrar must keep Index of Company Names | CO s. 22C(1) | Existing law. |
| Division 4: Registration of Document | | | |
| Subdivision 1 : Preliminary | | | |
| 29 | Unsatisfactory document | CO s. 346(1)(a) & (b) and s.348(1)(a) & (c) c.f. ACA s. 1274(8) | Existing law plus new provisions. The grounds for refusal of registration under the CO are not entirely clear. For example, it is not certain whether the grounds cover cases where the information contained in a document is internally inconsistent or inconsistent with the information already on the Companies Register. Clause 29 consolidates and clarifies these grounds with the requirements for registration of documents. |

| Clause | Contents | Derivation | Notes |
|---------------|---|--|--|
| 30 | Registrar may specify requirements (for section 29(1)) | CO s. 346(1)(c), s. 346(1A) and s. 346A(1)&(2) c.f. UKCA 2006 s. 1068(1), (3), (4), (6) & (7) | Existing law plus new provisions. In view of the availability of the electronic filing services, this clause makes provisions for:- (a) expanding on the Registrar's power to specify requirements as to form, authentication and manner of delivery of documents including rectification of an error in the Companies Register (subclauses (2), (4) & (5)); and (b) clarifying that it is not mandatory to deliver documents to the Registrar only by electronic means (subclause (6)). |
| 31 | Registrar may agree to delivery by electronic means (for section 29(1)) | c.f. UKCA 2006 s. 1070(1) & (2) and s. 1115(1) | New provision to allow the Registrar to agree with a company that all or any class of documents relating to the company will be delivered by electronic means. |
| 32 | Financial Secretary may make regulations requiring delivery by electronic means (for section 29(1)) | c.f. UKCA 2006 s. 1069(1) & (3) | New provision to empower the Financial Secretary to make regulations requiring documents that are authorised or required to be delivered to the Registrar by any Ordinance to be delivered by electronic means. |

| Clause | Contents | Derivation | Notes |
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| Subdivision 2 : Registrar's Power to Refuse to Accept and to Register Document | | | |
| 33 | Registrar may refuse to accept or register document | CO s. 348(1) c.f. ACA s. 1274(8) | Existing law plus new provisions. The Registrar's powers to refuse registration under the CO are not that comprehensive. Clause 33, together with the new definition of unsatisfactory document in clause 29, clarifies the Registrar's power to refuse to accept or register a document. Also, there is a new express provision clarifying the circumstances when a document is regarded as not having been delivered to the Registrar (subclause (4)). |
| 34 | Registrar may withhold registration of document pending further particulars etc. | c.f. ACA s. 1274(9) | New provision to empower the Registrar to withhold the registration of an unsatisfactory document and request certain remedial actions to be taken within a specified period. |
| 35 | Appeal against Registrar's decision to refuse registration | CO s. 348(3) & (4) | Existing law. |

| Clause | Contents | Derivation | Notes |
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| 36 | Certain period to be disregarded for calculating daily penalty for failure to deliver document to Registrar | CO s. 346(2), (3) & (4) | Existing law with new provisions requiring the Registrar to send a notice of refusal and the reason for the refusal to the presenter of the document (subclause (2)(b)). This reflects the existing practice of the Companies Registry. |
| Division 5: Registrar's Powers in relation to Keeping Companies Register | | | |
| 37 | Registrar may require company to resolve inconsistency with Companies Register | c.f. UKCA 2006 s. 1093(1), (3) & (4) | New provision to enable the Registrar to notify a company of an inconsistency in the information on the Companies Register and to require it to take steps to resolve the inconsistency within a specified period. Failure of the company and every responsible person concerned to comply with the Registrar's requirement is an offence. |
| 38 | Registrar may require further information for updating etc. | c.f. ACA s. 1274(15) – (17) | New provision to empower the Registrar to require a person to update his or her information on the Companies Register within a specified period. Failure of the person or the company and every responsible person concerned to comply with the Registrar's requirement is an offence. |

| Clause | Contents | Derivation | Notes |
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| 39 | Registrar may rectify typographical or clerical error in Companies Register | c.f. SCA s. 12B(3) & (4) | New provision to give the Registrar the power to, either on her own initiative or on an application by a company, rectify a typographical or clerical error contained in the Companies Register. |
| 40 | Registrar must rectify information on Companies Register on order of Court | c.f. UKCA 2006 s. 1096(1), (3), (4) & (5), and s.1097 | New provision to provide that the court may, on application by any person, direct the Registrar to rectify or remove any information on the Companies Register, if the court is satisfied that the information is inaccurate or derives from anything that is inaccurate or forged. |
| 41 | Registrar may appear in proceedings for rectification | Patents Ordinance, (Cap. 514) s. 131 | New provision to provide that the Registrar may appear in court proceedings for rectification and may submit a statement giving particulars of the matter relevant to the proceedings. |
| 42 | Registrar may annotate Companies Register | c.f. UKCA 2006 s. 1081(1), (4) & (6) | New provision to provide that the Registrar may make a note in the Companies Register for the purpose of providing information in relation to a rectification or removal. |
| Division 6: Inspection of Companies Register | | | |
| 43 | Registrar must make Companies Register available for | CO s. 168D(1), s. 305(1A), s. 305(1)(a) | Existing law. |

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| | public inspection | and s.305(3A) | |
| 44 | Registrar's certified true copy admissible as evidence | CO s. 305(3) | Existing law. |
| 45 | Issue of process for compelling production of information on Companies Register | CO s. 305(2) | Existing law. |

Division 7: Materials in Companies Register Unavailable for Public Inspection

Subdivision 1: General Protection

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| 46 | Information excluded from public inspection by law or court order | c.f. UKCA 2006 s. 1087(1)(g) & (k) | New provision. The Registrar must not make available for public inspection any information excluded from public inspection by or under an Ordinance or by a court order. |
| 47 | Registrar may withhold residential address and identification number from public inspection | c.f. UKCA 2006 s. 1088(1), (2), (4) & (5) c.f. UK DA Reg reg. 9(1), (2) & (3) | New provision to allow for applications to the Registrar for withholding from public inspection a usual residential address or the full number of identity card (as defined in clause 2(1)) or passport ("ID number") contained in existing or new documents delivered to the Registrar for registration. Section 1088 of the UKCA 2006 |

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| | | | and the related regulations apply to applications for making an address on the register unavailable for public inspection. However, clause 47 covers applications in respect of both residential addresses and ID numbers. |
| Subdivision 2 : Protection of Residential Address and Identification Number Contained in Certain Documents | | | |
| 48 | Interpretation | c.f. UKCA 2006 s. 240(1)(a), (2) & (3) | New provision on the interpretation of expressions used in Subdivision 2 of Division 7. The expression “director” includes a reserve director. |
| 49 | Registrar must not make residential address and identification number available for public inspection | c.f. UKCA 2006 s. 242(1) & (2) | <p>New provision to require the withholding from public inspection a director’s residential address or the full ID number of any person contained in an applicable document delivered to the Registrar for registration.</p> <p>Section 242 and the related provisions in sections 243 and 244 of the UKCA 2006 concern protection from disclosure of a director’s usual residential address. However, the corresponding provisions in clauses 49, 52 to 54 cover protection from disclosure of both a director’s usual residential address and the full ID number</p> |

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| | | | of an individual. |
| 50 | Registrar may make protected address available for inspection | c.f. UKCA 2006 s. 245 | New provision. This clause, together with clause 51, provides that, in case communication with a director at the director's relevant correspondence address (as defined in clause 48(1)) is not effective, the Registrar may, after considering the representations of the director and the company concerned, put the director's residential address on the Companies Register as the director's correspondence address and thereby make it available for public inspection. The effect of the Registrar's decision of putting the director's residential address on the Companies Register will last for five years. |
| 51 | Provision supplementary to section 50 | c.f. UKCA 2006 s. 246(1)(a), (2), (3)(a), (4) – (7) | New provision. See notes for clause 50. |
| 52 | Registrar must not use or disclose protected information | c.f. UKCA 2006 s. 242(3) | New provision to prohibit the Registrar from using or disclosing residential addresses of directors and full ID numbers of individuals protected under clause 49 (“protected information”) except as permitted by clause 53 or in |

| Clause | Contents | Derivation | Notes |
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| | | | accordance with clause 54. |
| 53 | Permitted use or disclosure of protected information by Registrar | c.f. UKCA 2006 s. 243(1), (2)(a) & (3) | New provision to ensure that the protected information will continue to be accessible by those who have a legitimate need. It permits the use or disclosure of the protected information by the Registrar for specified purposes – (a) for communicating with the director or individual; (b) for the performance of the Registrar’s functions; or (c) for disclosure to entities prescribed by regulations made under this clause upon the payment of a fee. |
| 54 | Disclosure under order of Court | c.f. UKCA 2006 s. 244(1), (3) & (4) | New provision. A creditor or member of the company concerned or any other person having a sufficient interest may have access to the protected information by applying to the court for an order for disclosure of the protected information. |
| Subdivision 3 : Supplementary | | | |
| 55 | Extent of prohibition | c.f. UKCA 2006 s. 1087(2) | New provision. If certain information (for example, an address) in a particular description of document is withheld from public inspection pursuant to Division 7, it does |

| Clause | Contents | Derivation | Notes |
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| | | | not mean that the same information cannot be made available for public inspection through other means or in the context of another description of document, in relation to which the restriction does not apply. |
| Division 8 : Miscellaneous | | | |
| 56 | Registrar may certify delivery or non-delivery of documents | Trade Marks Ordinance (Cap. 559) s. 79(2), (3) &(4) c.f. ACA s. 1274(7)(b) | New provision to provide that the Registrar may, on her initiative or on request by a person upon payment of a fee, issue a certificate as to whether a document has or has not been delivered to the CR on a particular date for registration. |
| 57 | Registrar not responsible for verifying information | CO s. 348A | Existing law. The provision in the CO is extended to clarify that the authority under which a document is delivered for registration is covered by the provision. |
| 58 | Immunity | CO s. 303B Trade Marks Ordinance (Cap. 559) s. 75(b) c.f. SCA s. 12A(1) | Existing law plus new provisions. There are no provisions in the CO covering immunity of the Registrar as regards official acts and providing protection to a person authorized by the Registrar to provide electronic filing services. The new provision provides for– (a) granting immunity to the |

| Clause | Contents | Derivation | Notes |
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| | | | <p>Registrar or any public officer as regards acts or omissions done in good faith in the performance of functions or in the exercise of powers under the Ordinance (subclause (1));</p> <p>(b) extending the protection to the provision of electronic filing service whereby documents may be delivered to the Registrar by electronic means (subclause (3)); and</p> <p>(c) replacing the term “relevant person” under the CO by “protected person” (subclause (5))(the Registrar is excluded from the new definition since subclause (1) separately covers the situation of the Registrar).</p> |
| 59 | Discrepancy between document and certified translation | c.f. UKCA 2006 s. 1107(2) | New provision to provide that a company cannot rely on the translation, where there is a discrepancy between the document and its certified translation, as against a third party whereas a third party may rely on the translation if he has no knowledge of the correct contents. |

| Clause | Contents | Derivation | Notes |
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| 60 | Offence for destruction etc. of registers, books or documents | CO s. 349A Twelfth Schedule | Existing law plus new provisions. There are no provisions in the CO to take account of filing and storage of documents in electronic form by the Registrar. The new provisions extend the offence to cover the destruction of any electronic record, microfilm, image or other record of the register, book or documents (subclauses (1)(b) & (3)(b)). |
| Schedule 10: Transitional and Saving Provisions | | | |
| 2 | Transitional and Saving Arrangements for Part 2 | | New provision to provide for:- <ul style="list-style-type: none"> (a) a person holding the office of Registrar under the CO will continue to be the Registrar on the commencement of the CB; and (b) the last seals of the Registrar prepared under the CO are to be regarded as the seals prepared under the CB. |