

**Bills Committee on Companies Bill**

**Comparison Table for Part 3 –  
Company Formation and Related Matters,  
and Re-registration of Company**

**PURPOSE**

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To facilitate clause-by-clause examination of Part 3 (Company Formation and Related Matters, and Re-registration of Company) of the Companies Bill, this paper provides a comparison table, at Annex, on the provisions in Part 3 and relevant provisions in the Companies Ordinance (Cap. 32) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 3 are set out in sections 3 to 12 of Schedule 10.

**PART 3 OF THE CB**

2. The major proposals and policy issues concerning Part 3 are set out in Annex B to LegCo Paper No. CB(1)1671/10-11(03), which was considered by Members at the meeting of 29 March 2011. Members expressed concern about the proposal under clause 104 which allows companies to appeal to the Administrative Appeals Board against certain decisions made by the Registrar of Companies instead of to the court. We have subsequently provided supplementary information to Members via LegCo Paper No. CB(1)1879/10-11(02).

**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  
24 August 2011**

**Comparison Table for Part 3**

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 Companies Bill (“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 wordings 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

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Division 1: Company Formation</b>				
<b>Subdivision 1: General Requirements for Formation</b>				
61	Types of companies	CO s.4(2), (4) & s.29	<p>Under CO, 8 different types of companies can be formed –</p> <ul style="list-style-type: none"> <li>(i) Private companies limited by shares</li> <li>(ii) Non-private companies limited by shares</li> <li>(iii) Private companies limited by guarantee without share capital</li> <li>(iv) Non-private companies limited by guarantee without share capital</li> <li>(v) Private unlimited companies with a share</li> </ul>	<p>Under the CB, companies that can be formed are streamlined to 5 types –</p> <ul style="list-style-type: none"> <li>(i) “private companies limited by guarantee without share capital” and “non-private companies limited by guarantee without share capital” will be merged into one category of “companies limited by guarantee without share capital”;</li> <li>(ii) “private unlimited companies without share capital” and “non-private unlimited companies without share capital” are abolished as it is unlikely that such types of companies will be formed in the future and</li> </ul>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>capital</p> <p>(vi) Non-private unlimited companies with a share capital</p> <p>(vii) Private unlimited companies without share capital; and</p> <p>(viii) Non-private unlimited companies without share capital</p>	<p>there is currently no such company on the register; and</p> <p>(iii) non-private companies are renamed “public companies” and are defined in cl.11.</p>
62	Formation of company	<p>CO s.4(1), 12(1)(c)</p> <p>CO s.14A(1) &amp; 15(1)</p> <p>CO s.304 &amp; 360(3A) &amp; Eighth Schedule</p>	<p>It provides for the formation of a company by submitting an incorporation form together with copies of Memorandum of Association (“MA”) and Articles of Association (“AA”). The MA and AA should be signed by founder members. The fees to be paid are set out in</p>	<p>Existing law except that:</p> <p>(i) with the abolition of the MA, it is no longer a requirement to sign and deliver to the Registrar a MA for registration; and</p> <p>(ii) Fees will be prescribed by regulations to be made under cl.897. Under the CO, the fees are paid pursuant to s.304 and Eighth</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			the Eighth Schedule.	Schedule. S.360(3A) stipulates that the Financial Secretary (“FS”) may amend the table of fees in the Eighth Schedule by order published in the Gazette.
63	Content of incorporation form	CO s.14A(2)  CO s.14A(2)(a), (b), (c), (d) & (f)  CO s.14A (2)(g)	It sets out the content of the incorporation form, including  (i) basic particulars of a company, like the name of the company;  (ii) particulars relating to founder member, including “the number of shares that each founder member is to take”;	The content of the form is moved to Schedule 2. The existing law is modified as follows:  (i) Cl.63(1)(a) is based on existing law, this should be read with s.1 of Schedule 2;  (ii) Cl.63(1)(b) relates to each founder member of the company. This should be read with s.2 of Schedule 2. The existing requirement in CO s.14A(2)(g) to set out “the number of shares that each founder member is to take” is moved to the Statement of Capital and Initial Shareholdings stipulated in cl. 63(2) and s.8 of Schedule 2;

Clause	Contents	Derivation	Position in CO	Position in CB
		<p>CO s.14A (2)(h), (k), (l); and CO s.18</p> <p>CO s.14A (2)(i)</p>	<p>(iii) particulars relating to director, including his “usual residential address” and a statement that he has consented to be a director of the company;</p> <p>(iv) particulars relating to secretary, including his “usual residential address”;</p>	<p>(iii) Cl.63(1)(c) relates to each person who is to be a director of the company on the company’s formation. This should be read with s.3 of Schedule 2 (which is the existing law plus new provisions in s.3(1)(a)(iii) &amp; 3(2) of Schedule 2 on “correspondence address” to enable a director to withhold his/her usual residential address from public inspection, see also clauses 48 to 54 and 632 to 638); and s.4 of Schedule 2 on statement relating to directors’ “consent to act” ;</p> <p>(iv) Cl.63(1)(d) relates to each person who is to be the company secretary, or one of the joint company secretaries, of the company on its formation. This should be read with s.5 of Schedule 2 (which is the existing law in CO s.14A(2)(i) except that the requirement for a company secretary to</p>

Clause	Contents	Derivation	Position in CO	Position in CB
		CO s.14A (2)(m)& (n)	(v) particulars relating to a statement made by the founder member who signs the incorporation form certifying that the MA and AA have been signed in accordance with the specified requirement under the CO and the contents of the copies of the MA and AA delivered for registration are the same as the company's original MA and AA;	provide his "usual residential address" is replaced by a "correspondence address" to take account of the proposed abolition of the requirement for company secretaries to file their residential addresses);  (v) Cl.63(1)(e) relates to statements made in relation to the company's articles. This should be read with s.7 of Schedule 2, which is based on existing law except that the references to MA are deleted;





Clause	Contents	Derivation	Position in CO	Position in CB
64	Signing of incorporation form	CO s.14A(3)	It provides that the incorporation form shall be signed by one founder member who is named in the form.	Existing law.
65	Statement of compliance to be contained in incorporation form	CO s.18(2) & 18(3)(a) & (b)	<p>It provides that an application for registration of a company must be accompanied by a statement made by the founder member who signed the incorporation form certifying that: -</p> <p>(i) the company has complied with all the requirements of matters precedent and incidental thereto; and</p> <p>(ii) the particulars contained</p>	Existing law except that reference to “the memorandum” is deleted.

Clause	Contents	Derivation	Position in CO	Position in CB
			in the form are accurate and consistent with those contained in the company's MA and AA.	
<b>Subdivision 2: Incorporation of Company</b>				
66	Issue of certificate of incorporation on registration	CO s.16(1)	It provides that upon registration of the incorporation form and the company's MA and AA, the Registrar will issue a certificate of incorporation, with her signature or her printed signature. This certificate will state that the company is incorporated and, where appropriate, that the company is limited.	Existing law except that:  (i) any proposed company need not deliver the MA to the Registry for registration;  (ii) specification as to how the certificate of incorporation should be signed by the Registrar is removed; and  (iii) the certificate of incorporation will state whether the company is limited or unlimited (cl.66(1)(b)).

Clause	Contents	Derivation	Position in CO	Position in CB
67	Conclusiveness of certificate of incorporation	CO s.18(1)	It provides that a certificate of incorporation is conclusive evidence that all of the requirements of the Ordinance as to registration have been complied with and that the company is duly registered under the Ordinance.	Existing law.
68	Effect of incorporation	CO s.16(2)	It provides that from the date of incorporation mentioned in the certificate of incorporation, the founder members named in the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the MA having perpetual succession and a common seal,	Existing law except that:  (i) after incorporation, the founder members, and any other persons who may from time to time become the company's members, shall be a body corporate by the name contained in the certificate of incorporation instead of in "the memorandum" (cl.68(1)); and  (ii) the reference to having a "common seal" is

Clause	Contents	Derivation	Position in CO	Position in CB
			able to exercise all the functions of an incorporated company.	removed.
69	Delivery of director's written consent	CO s.18A	It provides that for a company intended to be incorporated, every director must deliver to the Registrar "consent to act as director" containing a statement that he or she has consented to be a director of the company not later than 14 days after the date of incorporation of the company.	Existing law modified with the maximum fine and daily default fine increased from level 3 to level 4 and \$300 to \$700 respectively.
<b>Division 2: Company Articles</b>				
<b>Subdivision 1: General</b>				
70	Articles prescribing regulations for	CO s.9 c.f. UKCA 2006	It provides that a company limited by guarantee or an unlimited company must, and a	Existing law, but all companies must register articles containing basic information about the company (in place of the memorandum).

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	company	s.18(1)	company limited by shares may, register with the MA its AA prescribing regulations. If no AA are filed by a company limited by shares, the regulations contained in Table A in the First Schedule annexed to the CO (“Table A”) applies, see CO s.11(2) and CB clause 75.	Regulations which apply by default in the absence of modification or exclusion in the registered articles are now contained in the model articles prescribed by FS (“Model Articles”) instead of Table A (clauses 74 and 75 below).
71	Language of articles	CO s.12(1)(a)	It provides that AA shall be printed in the English or Chinese language.	Existing law.
72	Form of articles	CO s.12(1)(b)	It provides that AA shall be divided into paragraphs numbered consecutively.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 2: Model Articles</b>				
73	Financial Secretary may prescribe model articles	c.f. UKCA 2006 s.19(1) & (4)	N/A	New provision empowering the FS to prescribe model articles by notice published in the Gazette.
74	Adoption of model articles	CO s.11(1) c.f. UKCA 2006 s.19(3)	It provides that AA of a company may adopt all or any of the regulations contained in Table A in the First Schedule annexed to the CO.	Existing law modified to refer to Model Articles instead of Table A.
75	Application of model articles to limited company	CO s.11(2) c. f. UKCA 2006 s. 20	It provides that on the formation of a company limited by shares—  (i) if AA are not registered, it will be assumed that the regulations in Table A apply; and	Existing law modified to refer to Model Articles instead of Table A.

Clause	Contents	Derivation	Position in CO	Position in CB
			(ii) if AA are registered, in so far as they do not exclude or modify the relevant regulations contained in Table A, those Table A regulations will also apply.	
<b>Subdivision 3: Content and Effect of Articles</b>				
76	Company name	CO s.5(1)	It provides that the MA of every company limited by shares or by guarantee must state the name of the company.	Existing law except that the name is set out in the AA instead of the MA.
77	Company's objects	CO s.5(1A) & (1B)	It provides that companies which are allowed to dispense with the word "Limited" in their name under s.21 of the CO must, and all other companies	Existing law except that the objects (if any) are set out in the AA instead of the MA.

Clause	Contents	Derivation	Position in CO	Position in CB
			may state their objects in their MA.	
78	Members' liabilities	CO s.5(2) c.f. SCA s.22(1)(f)	It provides that the MA of companies limited by shares or by guarantee, must state that the liability of their members is limited.	Existing law except that:  (i) the statement of limited liability is set out in the AA instead of the MA; and  (ii) a new provision is added to provide that the AA of an unlimited company must state that the liability of the members is unlimited.
79	Liabilities or contributions of members of limited company	CO s.4(2)(a) & s.5(3)	It provides that a company must state in the MA the liability of members (for company limited by shares) or the undertaking of members to contribute (for company limited by guarantee).	Existing law except that the statement on the liability of members/the undertaking of members to contribute is stated in the AA instead of the MA.



Clause	Contents	Derivation	Position in CO	Position in CB
80	Capital and initial shareholdings	CO s.5(4)(a) c.f. UKCA2006 s.9(4) & 10 and Companies (Shares and Share Capital) Order 2009 of the UK, Art.2(3)	It requires the MA of a company, other than an unlimited company with share capital, to state the amount of share capital with which the company proposes to register (i.e. authorised share capital); and the division of that capital into shares of a fixed amount (i.e. par value).	These matters no longer need to be stated in the constitution due to the abolition of par value and authorised capital, however, cl.80(3) provides an option for the AA to state the maximum number of shares the company may issue. The statement of capital under cl.80 and s.8 of Schedule 2 requires other details of the share capital to be stated.
81	Effect of articles	CO s.23	(i) It provides that when registered the MA and AA are deemed to be a statutory contract between the members, and between the members and the company and can be enforced as such.	Existing law except that reference to “the memorandum” is deleted.

Clause	Contents	Derivation	Position in CO	Position in CB
			(ii) Any debt due from a member to the company under the MA or AA is in the nature of a specialty debt.	
<b>Subdivision 4: Alteration of Articles</b>				
82	Company may alter articles	CO s.7, 13(1), (1A) & 25A(2)	(i) It provides that a company may not alter its MA except to the extent authorized by the Ordinance.  (ii) No alteration to the AA is allowed if it contradicts the MA.  (iii) MA shall not authorize any variation or	Existing law except the restriction on alterations to MA is now a restriction on amendment to AA as regards increase of liability to contribute to the share capital of or otherwise to pay money to, the company.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>abrogation of the special rights of any class of members.</p> <p>(iv) Any alteration or addition in a company's AA must not be inconsistent with any special rights attached to a class of shares.</p>	
83	Alteration by special resolution or ordinary resolution	CO s.13(1), (2), (3) & (4) s.53(1)(a) & (2)	<p>(i) It provides that subject to the CO and the MA a company may amend or add to its AA by special resolution.</p> <p>(ii) Under the CO, the authorised share capital places a limitation on the maximum amount of</p>	<p>Existing law plus:</p> <p>(i) a new provision is introduced as cl.83(3) to enable members to vary the maximum number of shares a company may issue by ordinary resolution, for companies which state such a maximum number in their AA;</p> <p>(ii) the company must deliver to the Registrar for registration a notice of the alteration of</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>share capital which a company may issue. It can be altered under CO s.53(1)(a) &amp;(2) by ordinary resolution.</p> <p>(iii) The company shall within 15 days after the alteration deliver to the Registrar a printed copy of the company's AA as altered.</p>	<p>a company's AA in the specified form (cl.83(5)(a)); and</p> <p>(iii) the time to register a notice and a certified copy of the AA as altered with the Companies Registry ("CR") is changed from 15 days to 14 days to align with similar requirements in this and other Parts (cl.83(5)).</p>
84	Alteration of company's objects	CO s.8(1), (5), (7), (7A) & (8)	<p>(i) It provides that where a company chooses to state its objects in its MA, it may, by special resolution, alter the conditions of its MA with respect to the objects in</p>	<p>Existing law except that:</p> <p>(i) the alteration is made in the AA instead of the MA;</p> <p>(ii) a specified form is provided for filing of "a notice confirming the alteration of a</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>the manner set out.</p> <p>(ii) Dissentient members of a private company holding a certain percentage of the share capital and certain debenture holders may apply to the court to cancel any such proposed alteration .</p> <p>(iii) Upon altering the MA, a copy of the altered MA is required to be delivered to the Registrar within 15 days of the expiry of the period allowed for objection.</p>	<p>company's objects" (cl.84(7)(a));</p> <p>(iii) the time to register the order and the required documents with the CR is changed from 15 days to 14 days to align with similar requirements in this and other Parts (cl.84(6)).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
85	Alteration of certain articles by existing company	CO s.25A(1), (2), (3)[with reference to s.8(7)&(8) of CO], (3A) & (4)	<p>(i) It provides that any condition contained in a private company's MA which could lawfully have been contained in AA may be altered by special resolution. Members may apply to the Court for cancellation.</p> <p>(ii) The MA may prohibit or vary the alteration procedure set out in CO.</p> <p>(iii) The same procedural requirements in respect of objection to alteration of the company's objects under s.8 of CO apply. (See clause 84 above.)</p>	<p>Existing law except that:</p> <p>(i) the provision is only relevant for existing companies which had set out the relevant conditions in its MA (cl.85(1));</p> <p>(ii) the time to register the order and the required documents with the CR is changed from 15 days to 14 days to align with similar requirements in this and other Parts (cl.85(5)).</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
86	Application to Court to cancel alteration	CO s.8(2), (3) & (4)	It sets out the criteria for members or debenture holders who may object to the company's alteration of objects and other conditions in the MA as well as the procedures involved.	Existing law except as a result of the abolition of the par value shares, reference to the nominal value of the company's issued share capital is now a reference to the number of issued shares (cl.86(1)(a) and 86(3)).
87	Certain alterations not binding on members	CO s.25	It provides that unless he agrees in writing, a member will not be bound by any alteration made in the MA and AA of the company made after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares or increases his liability to contribute to the share capital of, or otherwise to pay money to, the company.	Existing law except that reference to "the memorandum" is deleted.

Clause	Contents	Derivation	Position in CO	Position in CB
88	Company must incorporate alteration into articles	CO s.27	It requires a company to include all alterations made in its MA in every copy of MA issued after the date of the alteration.	The requirement under the existing law in relation to the MA is now applied to the AA.
89	Alteration affecting status of private company	CO s.30(1)&(2), 12th Schedule	<p>(i) It provides that a private company ceases to be a private company if it alters its articles such that it no longer satisfies the conditions of section 29 of CO with regard to private companies.</p> <p>(ii) The company shall within a period of 14 days after the date on which the change of company status takes effect deliver to the Registrar for registration a</p>	<p>Existing law except that:</p> <p>(i) the filing of a prospectus or a statement in lieu of prospectus is substituted by the company's latest annual financial statements (cl.89(2)(b));</p> <p>(ii) new provision is added for filing a "notice of change of status from private to public" in the specified forms with the Registrar within 14 days after the date on which the alteration takes effect (cl.89(2)(a));</p> <p>(iii) new offence provision is added for company failing to file the notice</p>



Clause	Contents	Derivation	Position in CO	Position in CB
			prospectus or a statement in lieu of prospectus.	mentioned in (ii) (cl.89(3)); and  (iv) offence provision is modified such that a company failing to file the annual financial statements will be liable to a further fine of \$1,000 for each day during which the offence continues (cl.89(4)).
90	Alteration affecting status of public company		N/A	New provision which explicitly deal with the conversion of public companies to private companies and require filing a “notice of change of status from public to private” in the specified forms with the Registrar within 14 days after the date on which the alteration takes effect.
91	Notifying Registrar of alteration by order of Court	c.f. UKCA2006 s.35	N/A	(i) New provision to provide a mechanism for registering alterations which are made to a company’s AA by an order of the court. It obliges companies to give notice of such alterations, and to supply a copy of the

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>court order together with the AA as altered by the order to the Registrar, and is based upon the UK provision; and</p> <p>(ii) the time to register a notice of the alteration of a AA in the specified form with the Registrar is 14 days for aligning with similar requirements in this and other Parts.</p>
92	Notifying Registrar of alteration by Ordinance	c.f. UKCA2006 s.34(2), (3)(a) & proviso, (5) &(6)	N/A	<p>(i) New provision to provide a mechanism for registering alterations which are made to a company's AA by any other ordinance. It obliges companies to give notice of such alterations, and to supply a copy of the AA as altered by that other Ordinance to the Registrar. This is based upon the UK provision; and</p> <p>(ii) the time to register a notice of the alteration of AA in the specified form with the</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				Registrar is 14 days for aligning with similar requirements in this and other Parts.
<b>Subdivision 5: Miscellaneous</b>				
93	Conditions of memorandum of association of existing company to be regarded as provisions of articles	c.f. UKCA2006 s.28(1)	N/A	<ul style="list-style-type: none"> <li data-bbox="1384 587 2150 683">(i) New provision to cater for the abolition of the MA for existing companies;</li> <li data-bbox="1384 730 2150 922">(ii) A condition in the MA of an existing company is regarded as a provision of the company's AA after the commencement of CB;</li> <li data-bbox="1384 970 2150 1257">(iii) A condition in the MA of an existing company that states the authorized share capital or the par value of the company's shares is regarded as deleted and not to be regarded as a provision of the company's AA; and</li> </ul>

Clause	Contents	Derivation	Position in CO	Position in CB
				(iv) In any Ordinance or any existing document, a reference to the MA or a condition therein is a reference to the AA or a provision of the AA.
94	Articles of company limited by guarantee	CO s.24	It provides that any resolution passed by or provision in the MA or AA of a company limited by guarantee and not having a share capital to authorise the payment of a dividend or to distribute profits to its members is void and deems certain arrangements to be a share capital provision.	Existing law except that reference to “the memorandum” is deleted.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Division 3: Company Name</b>				
<b>Subdivision 1: Restriction on Company Name</b>				
95	Company must not be registered by certain names	CO s.20(1), 20(2) & 20(2A)	<p>(i) It prohibits registration of certain names with the Registry if the name is the same as a name appearing in the Registrar’s index of company names, the same as that of a body corporate established under an ordinance, or contains any word or expression specified in the Companies (Specification of Names) Order.</p> <p>(ii) It also prohibits</p>	Existing law except that reference to CE in CO s.20(1) and 20(2) is substituted by reference to “the Registrar”. There is no change in actual practice as the CE has delegated his powers under CO s.20(1) and 20(2) to the Registrar.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>registration by certain names (like the use of a name which would constitute a criminal offence), except with official permission from the Chief Executive (“CE”).</p> <p>(iii) Except with the consent of the Registrar, a company must not be registered by a name that is the same as a name for which a direction has been given.</p>	
96	Financial Secretary may specify word or	CO s.22B(1)(a)	It empowers the CE to specify words or expression under the Companies (Specification of	Existing law except that the power is to be exercised by the FS instead of the CE under the CO.

Clause	Contents	Derivation	Position in CO	Position in CB
	expression for section 95(2)(b)		Names) Order which require his approval before they can be included in a company name.	
<b>Subdivision 2: Limited Company Name with “Limited” as Last Word etc.</b>				
97	Limited company must not be registered without “Limited” as last word of name etc.	CO s.5(1)	It provides that in the MA of a company limited by shares / guarantee, the company’s name may be English or Chinese, or both, and must include a reference to the limited liability status of the company by the inclusion of the word “Limited” in the English name and “有限公司” in the Chinese name.	Existing law except that reference to “the memorandum” is deleted.
98	Registrar’s licence to dispense with “Limited” etc.	CO s.21(1) & (2)	It empowers the Registrar to grant a licence to certain companies to dispense with the word “limited” and/or “有限公司”, in their name.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
99	Terms and conditions of licence	CO s.21(3)	It provides that in granting the licence, the Registrar may impose such conditions as she thinks fit and may direct that such conditions be inserted in the company's MA and AA.	Existing law except that reference to "the memorandum" is deleted.
100	Effect of licence	CO s.21(4),(6) & (7)	<p>(i) It provides that a company which is granted a licence under s.21 of the CO need not use the word "limited" or "有限公司" in its company name or send a list of its members to the Registrar.</p> <p>(ii) It also provides for other requirements concerning the MA or AA of such company.</p>	Existing law except that reference to "the memorandum" is deleted.



Clause	Contents	Derivation	Position in CO	Position in CB
101	Revocation of licence	CO s.21(5)	It provides that the Registrar may revoke the licence granted and upon revocation, she shall give notice in writing of her intention and the company shall be afforded an opportunity of being heard in opposition to the revocation.	Existing law plus new provisions as follows:  (i) to set out explicitly the grounds upon which a licence may be revoked by the Registrar (cl.101(1)); and  (ii) the company must pass a special resolution to change name within the period specified in the notice of revocation (cl.101(5)), failing which the Registrar must add in the Company Register “Limited” or “有限公司” in its company name (cl.101(7)).
<b>Subdivision 3: Change of Company Name</b>				
102	Company may change name by special resolution	CO s.22(1), (1A), (1B), (7) & (8)	It provides that a company may change its name by passing a special resolution and shall within 15 days after the passing of the resolution, give notice in the specified form of the change	Existing law except that the time to register the notice with the CR is changed from 15 days to 14 days to align with similar requirements in this and other Parts (cl.102(2)).

Clause	Contents	Derivation	Position in CO	Position in CB
			of its name to the Registrar.	
103	Registrar may direct company to change same or similar name etc.	CO s.22(2), (3A), (3B), (4), (5) & (6)	It provides that upon registration of a particular name, the Registrar may direct a company to change the name within the period specified in her direction in various circumstances, like the name is considered to be the same as or too like another name in the Registrar's index of company names.	Existing law except that the penalty of 6 months' imprisonment is removed.
104	Registrar may direct company to change misleading or offensive name etc.	CO s.22A(1), (1A), (2), (3) & (4)	(i) It empowers the Registrar to direct a company to change its name in certain situations, like in the opinion of the Registrar, the company name gives so misleading an	Existing law except that:  (i) reference to the "court" is substituted by reference to the "Administrative Appeals Board" (cl.104(3)); and  (ii) the maximum fine and daily default fine

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>indication of the nature of its activities as to be likely to cause harm to the public.</p> <p>(ii) A company to which a direction is given may within three weeks apply to the court to set aside the direction.</p>	<p>increased from level 4 to level 6 and \$700 to \$2,000 respectively (cl.104(5)).</p>
105	Registrar may change company name in case of failure to comply with direction	CO s.22AA	It empowers the Registrar to replace a company's name with its company registration number if a company fails to comply with the Registrar's direction to change name.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 4: Supplementary Provision</b>				
106	Determining whether name is same as or similar to another name	CO s.20(3) & 22(3)	It provides the rules of interpretation to be adopted in determining whether one name is the same as or too like another.	Existing law.
<b>Division 4: Membership</b>				
107	Members of company	CO s.28	It provides that a member is a person who agrees to become a member and whose name is entered in the register of members of the company, including the founder members who are deemed to have agree to become members.	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
108	Members of holding company	CO s.28A	It provides that a subsidiary cannot generally be a member of its holding company. Any allotment or transfers of shares in a company to its subsidiary is void. It also sets out some exceptions.	Existing law.
109	Notifying Registrar of increase in number of members of company limited by guarantee	CO s.10(3)	It provides that where a company, not having a share capital, increases its members beyond the number with which it has been registered, it is required to give notice of such increase to the Registrar within 15 days of the passing of the resolution by the company effecting the increase.	Existing law except that: <ul style="list-style-type: none"> <li>(i) reference to “a company not having a share capital” is substituted by reference to “a company limited by guarantee” (cl.109(1));</li> <li>(ii) the time to register the notice in the specified form with the CR is changed from 15 days to 14 days to align with similar requirements in this and other Parts (cl.109(1)); and</li> </ul>

Clause	Contents	Derivation	Position in CO	Position in CB
				(iii) a new definition of “registered number” is added (cl.109(3)).
<b>Division 5: Capacity and Powers of Company</b>				
110	Company’s capacity etc.	CO s.5A & 17	<p>(i) It confers on a company the capacity and the rights, powers and privileges of a natural person and empowers the company to do anything which its MA or which an enactment or a rule of law allows it to do.</p> <p>(ii) It further provides that a company shall have power to acquire, hold and dispose of land.</p>	Existing law except that reference to “the memorandum” is substituted by reference to “the articles”.

Clause	Contents	Derivation	Position in CO	Position in CB
111	Company's exercise of powers limited by articles	CO s.5B	It provides that a company which retains an objects clause is prohibited from carrying on any business or exercising any power which it is not authorized by its MA to do. The act will not be invalid by reason only that it contravenes this provision.	Existing law except that reference to "the memorandum" is substituted by reference to "the articles".
112	Transaction or act binds company despite limitation in articles etc.	c.f. UKCA2006 s.40 (1), (2), (3), (4) & (5)	N/A	New provision to provide that the power of the company's directors to bind the company, or authorize others to do so, is to be regarded as free of any limitation under any relevant documents (e.g. AA etc.) of the company, if the other party dealing with the company is acting in good faith. This provision provides for a rebuttable presumption that a party dealing with a company acts in good faith. This is based upon the UK provision.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
113	Transaction or act involving directors or their associates is voidable	c.f. UKCA 2006 s. 41	N/A	New provision to provide that if the other party to the agreement is an “insider” <sup>1</sup> , subject to certain exceptions as provided, the transaction entered into with the company is voidable at the instance of the company and that insider cannot rely on clause 112(1) of the CB. The provision also sets out circumstances where the transaction ceases to be voidable. This is based upon the UK provision.
114	Section 112 not to apply to certain cases	c.f. UKCA 2006 s.42(1) to (3)	N/A	New provision to provide that the protection afforded to the other party stated in clause 112 will not apply where the company in question is an exempted company <sup>2</sup> , unless:  (i) the other party was unaware (at the time that the act was done) that the company is an exempted company; or

<sup>1</sup> If the other party to the transaction is a director of the company or its holding company or an entity connected with such a director.

<sup>2</sup> It refers to a company to which a licence under clause 98 of the CB relates.



Clause	Contents	Derivation	Position in CO	Position in CB
				<p>(ii) the company has received full consideration for the act done, and the other party was unaware that the act in question is not permitted by any relevant document of the company and thus, is beyond the company's capacity or is beyond the powers of the directors.</p> <p>(iii) This is based upon the UK provision except the UK provision applies to charitable companies. As there are no statutory charitable companies in HK, the CO s.21 Company (now clause 98 of CB) is substituted.</p>
115	No constructive notice of matters	CO s.5C	It provides that the common law doctrine of constructive notice is abolished in relation to the MA or AA filed with the Registrar or	Existing law except that reference to "the memorandum" is deleted.

Clause	Contents	Derivation	Position in CO	Position in CB
	disclosed in articles etc.		as regards a return or resolution lodged with her.	
<b>Division 6: Contracts of Company</b>				
116	Contracts made by or on behalf of company	CO s.32	It sets out how companies may enter into a contract.	Existing law modified to take into account changes made to the requirement for seal and the execution requirements stated in cl.122(2) (cl.116(2)).
117	Contracts made before company's incorporation	CO s.32A	(i) It provides that pre-incorporation contracts entered into by promoters on behalf of the company will take effect as a contract entered into by the promoter purporting to act for the company or as agent for the company and he will	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>be deemed to be personally liable on and entitled to enforce that contract.</p> <p>(ii) After incorporation, a company may ratify the contract to the same extent as if the company had been incorporated at the time that the contract was entered into and as if the contract had been entered into on its behalf by an agent acting without the authority of the company.</p>	
118	Bills of exchange and	CO s.33	It provides that where a person acting with the authority of the	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	promissory notes		company (whether express or implied) makes, endorses or accepts a bill of exchange or promissory note, such a document will be deemed to be made, accepted or endorsed on behalf of the company.	
<b>Division 7: Execution of Documents</b>				
<b>Subdivision 1: Company Seal</b>				
119	Company may have common seal etc.	CO s.93(1)(b), (4) & (5)(a) & proviso  c.f. UKCA 2006 s.45(1) and ACA s.123	It sets out that every company must have as its common seal a metallic seal on which its name is engraved in legible characters.	Existing law modified such that the keeping and use of a common seal is optional (cl.119(1)).

Clause	Contents	Derivation	Position in CO	Position in CB
120	Official seal for use abroad	CO s.35  c.f. UKCA 2006 s.49	<p>(i) It provides that a company whose objects require or allow the transaction of business outside Hong Kong, may, if authorized by its AA, retain an official seal for use in any territory, district or place not situated in Hong Kong.</p> <p>(ii) Where authorization has been given for the use of an official seal outside Hong Kong, a person may be appointed to affix the official seal to any document in that place outside Hong Kong.</p>	<p>Existing law modified:</p> <p>(i) to remove the requirement for objects clause or AA of a company to authorise use of its official seal for the transaction of business outside Hong Kong so that all companies have the right (cl.120(1)); and</p> <p>(ii) new definition of an “executing agent” is added (cl.120(7)).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
121	Official seal for sealing share certificates etc.	CO s.73A c.f. UKCA 2006 s.50(1) & (2)(a)	It provides for an official seal in addition to the company's common seal which is applied for sealing securities issued by the company.	Existing law but now applicable only for companies which choose to keep a common seal (cl.121(1)).
<b>Subdivision 2: Execution Requirements</b>				
122	Execution of documents by company	c.f. UKCA 2006 s.44(1),(2), (3), (4), (5), (6) & (8); ACA s.127(2)(a) & (b)	N/A	New provision to:-  (i) expressly provide that a company may execute a document by affixing the company seal. (This is not clearly expressed in the CO. Also under the CB it will no longer be mandatory for a company to have a seal: cl.119. So CB cl.122(2) provides an alternative method of execution.)  (ii) provide that a company may also execute a

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>document, if the company has only one director, by a single director, or if the company has two or more directors, by signature by the two directors or any two of the directors or by any one director and the company secretary;</p> <p>(iii) provide that in relation to purchasers for valuable consideration, who act in good faith, any document purporting to be signed in accordance with this provision is deemed to have been duly executed by the company.</p> <p>This is based upon the UK provision.</p>
123	Execution of deeds by company	c.f. UKCA 2006 s.46; ACA s.127(3)	N/A	New provision provides that a company may execute a document as a deed without the need for a common seal provided it is executed in accordance with cl.122 and it is expressed to be

Clause	Contents	Derivation	Position in CO	Position in CB
				executed as a deed and is delivered as a deed.
124	Execution of deeds or other documents by attorney for Company	CO s.34 c.f. UKCA 2006 s.47	It provides that a company may, by writing under its common seal, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds on its behalf in any place not situate in Hong Kong.	Existing law expanded to allow execution of any other documents, not just deeds, and to documents or deeds executed in Hong Kong as well as elsewhere (cl.124(1)).
<b>Division 8: Re-registration of Unlimited Company as Company Limited by Shares</b>				
125	Unlimited company may apply for re-registration as company limited by shares	CO s.19(1),(2)(a) & (b)(ii)	(i) It provides that a company registered as unlimited may be re-registered as limited by passing a special resolution to that effect and lodging with the	Existing law modified such that:  (i) an unlimited company may not be re-registered as a company limited by guarantee, only as a company limited by shares (cl.125(1));



Clause	Contents	Derivation	Position in CO	Position in CB
			<p>Registrar an application signed by a director or secretary together with printed copies of the MA and AA as altered by the resolution.</p> <p>(ii) If the company is to have a share capital, the required special resolution must state the share capital of the company.</p>	<p>(ii) reference to “the memorandum” is deleted; and</p> <p>(iii) the statement of capital of a company after re-registration must conform to the requirements stated in s.8 of Schedule 2 of CB. These new provisions are to be added to align with similar provision in cl.196 of the Bill (cl.125(3)-(5)).</p>
126	Application for re-registration	CO s.19(1) & (3)	It sets out that for the re-registration of an unlimited company as a limited company, the company must lodge with the Registrar certain documents, including a copy of the special resolution within 15 days after	Existing law except that the reference to the MA is replaced by AA.

Clause	Contents	Derivation	Position in CO	Position in CB
			its passing, and a printed copy of the MA and AA as altered by the special resolution.	
127	Issue of fresh certificate of incorporation	CO s.19(4)&(5) c.f. UKCA 2006 s.107(4)(a)	Where the re-registration procedure has been complied with, the Registrar shall issue a certificate of incorporation which reflects the changed status of the company from unlimited to limited.	Existing law modified to take account of the fact that:  (i) re-registration can only be as a company limited by shares; and  (ii) reference to the “memorandum” is deleted.
128	Winding up of company re-registered as company limited by shares	CO s.19(6)	This provides for the various obligations which arise in the event of the winding up of a company which has been re-registered under s.19 of CO (see cl. 125 above).	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Schedule 2: Content of Incorporation Form</b>				
1-8	Content of Incorporation Form	CO s.14A(2), (4) & (5)	Please see s.14A of CO above.	Please see clause 63 above.
<b>Schedule 10: Transitional and Saving Provisions</b>				
3-12	Transitional and Saving Arrangements for Part 3	N/A	N/A	New provisions to provide transitional and saving arrangements in the following areas:- (i) Company formation; (ii) Registrar's licence to dispense with "Limited"; (iii) Alteration of company's objects; (iv) Alteration of certain conditions of MA; (v) Alteration of AA by special resolution; (vi) Savings for Table A in former Companies Ordinance; (vii) Special resolution changing company name;

Clause	Contents	Derivation	Position in CO	Position in CB
				(viii) Registrar's direction to change company name; and (ix) Re-registration of unlimited company as limited company.