

**Bills Committee on Companies Bill**

**Comparison Table for Part 12 –  
Company Administration and Procedure**

**PURPOSE**

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To facilitate clause-by-clause examination of Part 12 (Company Administration and Procedure) of the Companies Bill (“CB”), this paper provides a comparison table, at Annex, on the provisions in Part 12 and relevant provisions in the Companies Ordinance (Cap. 32) (“CO”) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 12 are set out in sections 92 to 113 of Schedule 10.

**PART 12 OF THE CB**

2. The major proposals and policy issues concerning Part 12 are set out in Annex B to LegCo Paper No. CB(1)1879/10-11(03), which was considered by Members at the meeting of 6 May 2011. Members expressed concerns about the duty of a company to send a copy of passed written resolution to all members and the auditor and the situation where a proxy acts as the chairman at a general meeting. We have subsequently provided supplementary information to Members via LegCo Papers No. CB(1)2132/10-11(03) and CB(1)2439/10-11(03).

**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  
5 December 2011**

**Comparison Table for Part 12**

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

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
<b>Division 1: Resolutions and Meetings</b>				
<b>Subdivision 1 : Preliminary</b>				
537	Interpretation			
(1) & (2)		c.f. UKCA 2006 s.289, 290,		New provisions on the meaning of “circulation date”, “electronic

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		298(2) and 333(4)		address” and “eligible members” for the purpose of Division 1.
(3)		CO s.116BB(2)	The provisions in s.116B and 116BA (written resolutions) do not affect the common law doctrine of unanimous consent.	Existing law.
<b>Subdivision 2 : Written Resolution</b>				
538	Written resolution	CO s.116B(1), (3) to (6) & (11)	Anything that may be done by a company in general meeting may be done by a written resolution, except for removing an auditor or a director.	Existing law.
539	Power to propose written resolution	c.f. UKCA 2006 s.288(3) and 292(5)		New provision on the power of the directors or members holding not less than 2.5% of voting rights to propose a written resolution (or a lower percentage as provided in the articles).
540	Company’s duty to	c.f. UKCA 2006 s.291(2)		New provision requiring a company to circulate a written

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	circulate written resolution proposed by directors			resolution proposed by the directors.
541	Members' power to request circulation of written resolution	c.f. UKCA 2006 s.292(1) & (3)		New provision enabling the members to request circulation of a written resolution together with a statement on the subject matter of the resolution.
542	Company's duty to circulate written resolution proposed by members	c.f. UKCA 2006 s.292(4) to (6)		New provision requiring a company to circulate the written resolution proposed by members and the statement.
543	Circulation of written resolution	c.f. UKCA 2006 s.291(2) to (7), 293(1), 294 and		New provision imposing an obligation on the company to send a proposed written resolution and

Clause	Contents	Derivation	Position in CO	Position in CB
		299		statement to all members and allowing the sending to be done by electronic means. The company and responsible person are liable to a fine for contravention of the requirements.
544	Application not to circulate accompanying statement	c.f. UKCA 2006 s.295(1) & (2)		New provision enabling the court, on application by the company or an aggrieved person, to relieve the company of the obligation to circulate the members' statement if the right to require circulation is abused.
545	Company's duty to notify auditor of proposed written resolution	CO s.116BA(1), (2) &(4)  c.f. UKCA 2006 s.502(1)	A director or secretary must secure that a copy of proposed written resolution is sent to the company's auditors. An offence is committed for failure to do so, but the failure does not affect the validity of any resolution. There is statutory defence in s.116BA(3) of the CO.	Existing law modified – (a) the company, instead of a director or company secretary, is required to send the resolution (subclause (1)); (b) copy of document relating to the resolution must also be sent to the auditor (subclause (1)(b));

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>(c) the company is also liable for failure to send the resolution (subclause (3));</p> <p>(d) the statutory defence in s.116BA(3) of the CO is removed; and</p> <p>(e) officers are only liable if they are “responsible persons”.</p>
546	Procedure for signifying agreement to proposed written resolution	CO s.116B(1) to (3) c.f. UKCA 2006 s.296	A written resolution shall be signed by all the members entitled to vote at a meeting and the signatures need not be on a single document. The date of the resolution is the date when the resolution is signed by the last member.	Existing law plus new provisions that provide for – (a) signifying agreement by electronic means (subclause (3)); and (b) non-revocation of the agreement once signified (subclause (4)).
547	Agreement signified by eligible members who are joint holders of	c.f. UKCA 2006 s.286		New provision on votes of joint holders of shares. The person whose vote counts is the joint holder whose name appears first in the register of members.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	shares			
548	Period for agreeing to proposed written resolution	c.f. UKCA 2006 s.297		New provision specifying the time limit of 28 days for passing a written resolution, unless the articles specify a different period.
549	Company's duty to notify members and auditor that written resolution has been passed	c.f. SCA s.184E(1)		New provision requiring the sending of a copy of the written resolution to the members and the auditor within 15 days after it is passed and providing for an offence for failure to do so.
550	Sending document relating to written resolution by electronic means	c.f. UKCA 2006 s.298(1)		New provision allowing communication with a company by electronic means where the company has given an electronic address in a document containing or accompanying a proposed written resolution.

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551	Relationship between this Subdivision and provisions of company's articles	CO s.116BB(1)  c.f. UKCA 2006 s.300	Ss.116B (written resolutions) and 116BA (duty to notify auditors of proposed written resolutions) have effect irrespective of any provision of the memorandum or articles.	Existing law modified – (a) the effect of the provision on s.116BA of the CO is removed from the scope of this clause; (b) subclauses (2) & (3) preserve the validity of a provision in the articles on the passing of a resolution without a meeting but only where there is approval by all members entitled to vote.
<b>Subdivision 3 : Resolutions at Meetings</b>				
552	General provisions	CO s.116(4)  c.f. UKCA 2006 s.281(3) and 301	Notice of a meeting at which a special resolution is proposed shall be deemed to be duly given and the meeting duly held when the notice is given and meeting is held in manner provided by the CO or the articles.	Existing law modified – (a) the scope of s.116(4) of the CO is extended to cover an ordinary resolution; and (b) a resolution is validly passed if the requirements in the relevant provisions of Part 12 <u>and</u> the articles are complied with whereas s.116(4) of the CO provides that the



Clause	Contents	Derivation	Position in CO	Position in CB
				<p>requirements of the CO <u>or</u> the articles are to be complied with (subclause (1));  plus a new provision in subclause (2) which expressly provides that where the type of resolution is not specified in a provision of any ordinance, what is required is an ordinary resolution unless the articles require a higher majority.</p>
553	Ordinary resolution	c.f. UKCA 2006 s.282		New provision to define ordinary resolution (subclause (1)) and to provide that anything that may be done by ordinary resolution may also be done by special resolution (subclause (4)).
554	Special resolution	CO s.116(1), (3) & (5)  c.f. UKCA 2006 s.283(6)	A special resolution is a resolution that has been passed by not less than 3/4 of the votes cast at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution	Existing law plus – (a) a requirement that the text of the special resolution should be included in the notice of the meeting (subclause (4)(a)); and (b) if the notice of meeting

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			as a special resolution has been given. Any reference to an extraordinary resolution shall be deemed to be a reference to a special resolution.	specified the intention to propose the resolution as a special resolution, it may only be passed as a special resolution (subclause (4)(b)).
<b>Subdivision 4 : Calling Meetings</b>				
555	Directors' power to call general meeting	c.f. UKCA 2006 s.302		New provision expressly setting out the directors' power to call a general meeting.
556	Members' power to request directors to call general meeting	CO s.113(1) & (2) c.f. UKCA 2006 s.303(1) to (4) & (6)	The directors shall forthwith proceed to convene an extraordinary general meeting ("EGM") on the requisition of members holding not less than 1/20 of the paid up capital or 1/20 of the total voting rights. The requisition must state the objects of the meeting and be signed and deposited at the registered office.	Existing law modified – (a) the requirement to "forthwith" proceed to convene a meeting is removed; (b) the threshold for the request based on the paid up capital is removed (subclause (2)); (c) the requirement to state "the objects of the meeting" is changed to "the general nature of the business to be dealt with" (subclause (3)(a));

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>(d) the text of the resolution may be included in the members' request (subclause (3)(b)); and</p> <p>(e) the new subclause (5) facilitates requests in electronic form.</p>
557	Directors' duty to call general meeting requested by members	CO s.113(3) & (6)  c.f. UKCA 2006 s.304(2) & (3)	If the directors fail, within 21 days, to convene a meeting requisitioned by the members within the specified time, the requisitionists representing more than 1/2 of their total voting rights may convene a meeting. Where a special resolution is to be proposed at the meeting, the directors shall be deemed not to have duly convened the meeting if they do not give the notice required by s.116.	Existing law modified in that – <p>(a) the notice of meeting must include notice of the resolution identified in the request for calling a meeting (subclause (3));</p> <p>(b) the business of the meeting includes such a resolution (subclause (4)); and</p> <p>(c) the notice of meeting for passing a special resolution must include the text of the resolution (subclause (5)).</p>
558	Members' power to call general	CO s.113(3) to (5)	The meeting to be convened by the requisitionists shall be convened in the same manner, or	Existing law plus new provisions – <p>(a) the notice of meeting must include notice of the resolution</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	meeting at company's expense	c.f. UKCA 2006 s.305(2) & (5)	as nearly as possible, as that in which meetings are to be convened by directors and that the reasonable expenses incurred by the requisitionists shall be paid by the company.	identified in the request for calling a meeting (subclause (2)); and (b) the business of the meeting includes such a resolution (subclause (5)).
559	Members' power to call general meeting when there is no director etc.	CO s.114A(1)(b) and First Schedule Table A reg. 51  c.f. ACA s.249F(1)	Subject to the articles 2 or more members holding not less than 1/10 in nominal value of issued share capital or 5% in number of the members may call a meeting. Regulation 51 of Table A provides that if there are not within HK sufficient directors to form a quorum, any director or 2 members may convene an EGM.	Existing law modified – (a) the provision only applies if a company does not have any director or does not have sufficient directors capable of acting to form a quorum; (b) a single director may call a meeting; and (c) the threshold for members to call a meeting is now based on 10% of the total voting rights irrespective of whether the company has a share capital.
560	Power of Court to order	CO s.114B	The court has power to order a meeting if it is impracticable to	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
	meeting		call or conduct a meeting in manner prescribed by the articles or the CO.	
<b>Subdivision 5 : Notice of Meetings</b>				
561	Notice required of general meeting	CO s.114(1) to (3) and 116(1)  c.f. UKCA 2006 s. 307(3)	<p>21 days' notice is required for calling an annual general meeting ("AGM") and 14 days' notice is required for a meeting where no special resolution is proposed. Any provision in the articles is void if it provides for a shorter notice.</p> <p>21 days' notice is required for calling a meeting where a special resolution is proposed. A majority in number of the members holding not less than 95% in nominal value of the shares or of the total voting rights may agree to pass a special resolution at a meeting where less than 21 days' notice has been given.</p>	<p>Existing law modified –</p> <p>(a) the 21 days' notice period for passing a special resolution is replaced by 14 days (subclause (1)(b)(i));</p> <p>(b) the threshold, for allowing shorter notice, based on a percentage of nominal value of share capital is removed; plus a new subclause (2) which expressly requires a longer period of notice for calling a meeting if the articles so provides.</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
562	Manner in which notice to be given	CO s.114A(1)(a) c.f. UKCA 2006 s.308 and 333(1)	Subject to the articles, notice of meeting shall be served in the manner described in Table A.	Existing law modified – (a) the requirement to serve notice of a meeting in accordance with Table A is removed; (b) the provision is not subject to the articles of the company; and (c) subclause (1) provide for giving notice of a meeting by electronic means.
563	Publication of notice of general meeting on website	c.f. UKCA 2006 s.309		New provision setting out the requirements for giving notice of a general meeting by a company by means of a website.
564	Persons entitled to receive notice of general meeting	CO s.114A(1)(a) & (2) and First Schedule Table A reg. 135(b) c.f. UKCA 2006 s.310(1), (2) & (4)	Subject to the articles, notice of meeting shall be served on every member in the manner described in Table A. In the case of a listed company, notice must also be served on members not entitled to vote.	Existing law modified – (a) for a listed company, the notice of meeting must also be given to every member not entitled to vote at the meeting “in the same manner” as the notice given to members who are so

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			Table A regulation 135(b) provides that notice shall be given to persons entitled to a share in consequence of the death or bankruptcy of a member.	entitled (subclause (4)); and (b) subclause (5) is added for clarification; plus new provisions in subclauses (1)(b), (2) & (3) on the notice to directors and the persons entitled to a share in consequence of a member's death or bankruptcy.
565	Duty to give notice of general meeting to auditor	CO s.141(7) s.116BA(2)  c.f. ACA s.249K(1) & (2)	The auditor is entitled to attend and to receive notices and other communications relating to any general meeting.  A director or secretary commits an offence if he fails to secure that a copy of a proposed written resolution is sent to the auditors.	Existing provision modified in that an obligation on the company to give notice of general meeting to an auditor is expressly provided.
566	Contents of notice of general meeting	CO s.111(1), 155B(1)(a), (4) to (6), First Schedule Table	The notice calling an AGM must specify that the meeting is an AGM. Where a company other than a wholly owned subsidiary	Existing law modified – (a) there are new requirements as to contents of notice of general meeting in subclauses

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		A reg.52 c.f. UKCA 2006 s.311	gives notice of an intended resolution, the notice shall contain information and explanation to indicate the purpose of the resolution, failing which an offence would be committed by the company and officers in default. Table A regulation 52 sets out the requirements as to a notice of general meeting.	(1)(a), (b), (c), (e)(i) together with ancillary new provisions in subclauses (2), (3) & (6); and (b) the maximum fine under subclauses (4) in so far as it relates to an offence under subclauses (1)(e)(ii) is reduced from level 6 to level 3.
567	Explanation of improving director's emoluments to be set out in notice of general meeting	CO s.116A	An adequate explanation of any alteration or addition to the articles to provide or improve emoluments for a director must be set out in the notice of meeting or in a document attached thereto. The provision must be approved by a resolution not relating also to other matters.	Existing law.
568	Resolution requiring special notice	CO s.116C c.f. UKCA 2006	28 days' notice to the company must be given for a resolution requiring special notice. The	Existing law except that the notice period for the company giving notice is changed from 21 to 14



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		s.312	company must give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, but if that is not practicable, 21 days' notice shall be given by advertisement or other modes allowed by the articles.	days (subclause (3)).
569	Accidental failure to give notice of meeting or resolution	CO s.115A(6), First Schedule Table A reg. 53  c.f. UKCA 2006 s.313	<p>Notice of a proposed resolution for an AGM is deemed to have been given notwithstanding the accidental omission in giving it, of 1 or more members.</p> <p>Regulation 53 of Table A provides that the accidental omission to give, or the non-receipt of, notice of a meeting to any person entitled to receive notice shall not invalidate the proceedings at that meeting.</p>	Existing law modified to provide that any accidental failure to give, or non-receipt of, notice of general meeting or intended resolution to any person entitled to receive notice is generally disregarded.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 6 : Members' Statements</b>				
570	Members' power to request circulation of statement	CO s.115A(1)(b), (2) & (4)(a)  c.f. UKCA 2006 s.314	It is the company's duty, on the requisition of the specified number of members and at their expense, to circulate a statement of not more than 1,000 words with respect to a proposed resolution or the business to be dealt with in a general meeting. The requisition must be deposited at the registered office at least 1 week before the meeting.	Existing law plus – (a) a new requirement that the threshold of 50 members must have “a relevant right to vote” (subclauses (2)(b) & (3)); and (b) a new subclause (4) that facilitates the sending of the request in electronic form.  The expenses of circulations are dealt with in clause 572.
571	Company's duty to circulate members' statement	CO s.115A(1), (3) & (7)  c.f. UKCA 2006 s.315	The statement shall be circulated to members in any manner permitted for service of notice of meeting. In the event of default, every officer in default is liable to a fine.	Existing law plus a new provision in subclause (2).
572	Expenses of circulating members' statement	CO s.115A(1) & (4)(b)  c.f. UKCA 2006	The requisitionists shall deposit a reasonably sufficient sum to meet the company's expenses of circulating the members'	Existing law modified by requiring a company to bear the expenses of circulating a members' statement if the meeting to which it relates is an

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		s.316	statement.	AGM and is received in time for sending with the notice of meeting (subclause (1)).
573	Application not to circulate members' statement	CO s.115A(5) c.f. UKCA 2006 s.317	The court has power to relieve the company of an obligation to circulate a member's statement if the rights are being abused to secure needless publicity for defamatory matter. The court may order that the requisitionists pay the company's costs.	Existing law modified by changing the test for non-circulation of the statement to whether the members' rights "are being abused" (subclause (1)).
<b>Subdivision 7 : Procedure at Meetings</b>				
574	Meeting at 2 or more places	c.f. UK The Companies (Shareholders' Rights) Regulations 2009 reg.8; and ACA s.249S		New provision permitting a company to hold a general meeting at 2 or more places using audio-visual technology.
575	Quorum at meeting	CO s.114A(1)(c),	Subject to the articles, 2 members personally present shall be a	Existing law plus new provisions – (a) subject to the articles, 2

Clause	Contents	Derivation	Position in CO	Position in CB
		114AA and First Schedule Table A reg.55  c.f. UKCA 2006 s.318(1) & (2)	quorum.  For a sole member company, notwithstanding the articles, one member present in person or by proxy shall be a quorum.	members present in person <u>or by proxy</u> is a quorum (subclause (3)); and (b) subclauses (2) & (4) clarify that a corporate member present by its corporate representative counts towards a quorum.
576	Chairperson of meeting	CO s.114A(1)(d)	Subject to the articles, any member elected by the members present at a meeting may be the chairman thereof.	Existing law.
577	Resolution passed at adjourned meeting	CO s.118(a) & (b)	Where a resolution is passed at an adjourned general or class meeting, the resolution shall be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.	Existing law. This provision applies to class meetings by virtue of clauses 613(1) and 614(1).

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
<b>Subdivision 8 : Voting at Meetings</b>				
578	General rules on votes	CO s.114A(2)(b) c.f. UKCA 2006 s.284(2) to (4)	Notwithstanding anything to the contrary in the articles, shares in a company held in trust for that company shall not confer any right to vote at meetings.	Existing law (subclause (5)) plus new provisions on voting on a show of hands (subclauses (1), (2) & (4)) and on a poll by a member or a proxy (subclauses (3) & (4)).
579	Votes of joint holders of shares	c.f. UKCA 2006 s.286		New provision on votes of joint holders of shares. The person whose vote counts is the joint holder whose name appears first in the register of members.
580	Declaration by chairperson on show of hands	c.f. UKCA 2006 s.320		New provision providing that on a vote on a resolution on a show of hands, the chairperson's declaration that a resolution has or has not been passed (subclause (1)) or an entry in respect thereof in the minutes of the meeting (subclause (2)), are conclusive evidence of that fact.

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581	Right to demand poll	CO s.114D(1) & (2)  c.f. UKCA 2006 s.321 and 329	<p>A specified number or percentage of members have the right to demand a poll and such right cannot be excluded by the articles (except in relation to the election of the chairman of the meeting or the adjournment of the meeting).</p> <p>The instrument appointing a proxy to vote at a meeting shall be deemed to confer authority to demand or join in demanding a poll.</p>	<p>Existing law modified –</p> <p>(a) the threshold for members to demand a poll is reduced from 1/10 to 5% of the total voting rights (subclause (2)(b)); and</p> <p>(b) the threshold based on 1/10 of the paid up capital is removed;</p> <p>plus a new subclause (2)(c) that allows the chairperson to demand a poll.</p>
582	Chairperson's duty to demand poll			<p>New provision requiring a chairperson to demand a poll if, before or on declaration of the result on a show of hands, the chairperson knows from the proxies received that the result on a show of hands will be different from that on a poll.</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
583	Voting on poll	CO s.114E	On a poll taken at a meeting or class meeting, a member entitled to more than 1 vote need not use all his votes or cast them in the same way.	Existing law. This provision applies to a class meeting by virtue of clauses 613(1) and 614(1).
584	Company's duty to record result of poll in minutes of general meeting	c.f. ACA s.251AA(1)  The Main Board Listing Rule 13.39(5)		New provision on a company's duty to record the result of a poll in the minutes of proceedings of the meeting coupled with an offence for default.
585	Saving for provisions of articles as to determination of entitlement to vote	c.f. UKCA 2006 s.287		New provision clarifying that the provisions in Division 1 Subdivision 8 do not affect any provision of the articles on the final and conclusive determination of an objection to a person's entitlement to vote or on the grounds on which such determination may be questioned in legal proceedings.

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<b>Subdivision 9 : Proxies and Corporate Representatives</b>				
586	Right to appoint proxy	CO s.114C(1), (1A), (2) & (8)  c.f. UKCA 2006 s.324	<p>A member of a company having a share capital who is entitled to attend and vote at a meeting may appoint another person as his proxy to attend, vote and speak at the meeting. Subject to the articles, a proxy shall not be entitled to vote except on a poll.</p> <p>The right to appoint a proxy includes the right to appoint separate proxies but the number of proxies shall not, subject to the articles, exceed 2 on the same occasion.</p>	<p>Existing law modified by –</p> <p>(a) extending the right to appoint a proxy to all companies (subclause (1));</p> <p>(b) clarifying that a proxy may exercise all or any of the member’s rights, including voting on a show of hands (subclause (1)); and</p> <p>(c) removing the 2 persons cap on the number of proxies that may be appointed (subclause (3));</p> <p>plus a new provision in subclause (2) that confines proxies to members in the case of a guarantee company, if so required by the articles.</p>
587	Notice of meeting to contain statement of	CO s.114C(3)  c.f. UKCA 2006 s.325(1), (2) &	In every notice of meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a	<p>Existing law modified –</p> <p>(a) the provision applies to all companies instead of a company having a share</p>



<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	rights etc.	(4)	member entitled to attend and vote is entitled to appoint a specified number of proxies to attend and vote instead of him, and that a proxy need not also be a member. The failure to do so is an offence.	capital only (subclause (1)); and (b) a new subclause (3) provides that contravention of the notice requirement does not invalidate anything done at the meeting.
588	Notice required of appointment of proxy etc.	CO s.114C(4) c.f. UKCA 2006 s.327	Any provision in the articles is void if it has the effect of requiring the instrument appointing a proxy, or other document necessary to show the validity of the appointment, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting.	Existing law plus new provisions in subclauses (2)(b), (c) & (3) on the notice period for an appointment of proxy where a poll was demanded.
589	Sending documents relating to proxies in electronic form	c.f. UKCA 2006 s.333(2) to (3)		New provision. A company is regarded as having agreed that any document or information relating to proxies may be sent to it by electronic means if it has

Clause	Contents	Derivation	Position in CO	Position in CB
				given an electronic address in an instrument of proxy or an invitation to appoint a proxy.
590	Company-sponsored invitations to appoint proxies	CO s.114C(5) & (8) c.f. UKCA 2006 s.326(4)	<p>It is an offence if invitations to appoint as proxy a person or 1 of a number of persons specified in the invitations are issued at the company's expense to some members only.</p> <p>An officer of the company shall not be liable by reason only of the issue to a member at his written request a form of appointment naming the proxy or a list of persons willing to act as proxy if the form or list is available on written request to every member entitled to vote by proxy.</p>	Existing law except that the – (a) requirement for a request “in writing” is removed (subclause (2)); (b) “knowingly and wilfully” is removed from the mens rea of the offence (subclause (3)); and (c) officers are only liable if they are “responsible persons”.
591	Requirement as to instrument of proxy issued	CO s.114C(6)	Notwithstanding anything in the articles, any form issued to a member for appointing a proxy	Existing law modified by removing the reference to resolutions dealing with “special business” so that the

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	by company		shall be such as to enable the member to instruct the proxy to vote in favour of or against (or, in default of instructions, to exercise his discretion) each resolution dealing with any special business to be transacted at the meeting.	provision applies to all business transacted at a general meeting.
592	Chairing meeting by proxy	c.f. UKCA 2006 s.328		New provision. A proxy may be elected as the chairperson of a meeting, subject to the articles.
593	Company-sponsored proxy's duty to vote in the way specified in appointment of proxy	c.f. ACA s.250BB(1) & (2)		New provision. A person named by a company who has been appointed as a proxy by a member – (a) must vote in the way specified by the member (subclause (2)); and (b) if the person is appointed as a proxy by 2 or more members who specify different ways to vote –

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>(i) he must vote on a show of hands according to the majority of the total voting rights that he is authorized to exercise at the meeting; and</p> <p>(ii) if there is no majority, he must not vote on a show of hands (subclause (3));</p> <p>An offence for contravention is provided in subclause (4).</p>
594	Notice required of termination of proxy's authority	c.f. UKCA 2006 s.330		<p>New provision on the effect of a notice of termination of the proxy's authority to act on –</p> <p>(a) the quorum, the validity of anything done by the proxy as the chairperson, or a poll demanded by the proxy (subclauses (2), (4) &amp; (5)); and</p> <p>(b) the validity of a vote given by the proxy (subclauses (3), (4) &amp; (5)).</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
595	Effect of member's voting in person on proxy's authority			
(1)				New provision based on common law. A proxy's authority is revoked if the member who appointed the proxy exercises his voting right in person.
(2)		UK The Companies (Model Articles) Regulations 2008 Schedule 1 reg.46(1) and Schedule 3 reg. 39(2)		New provision. A member remains entitled to attend, speak or vote at a meeting despite appointment of a proxy.
596	Representation of body corporate at	CO s.115(1) & (2)	A corporate member may authorize a person to act as its representative at any meeting of	Existing law. This provision also applies to a class meeting by virtue of clauses 613 and 614.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	meetings		the company.	
597	Representation of recognized clearing house at meetings	CO s.115(1A) & (3)	A recognized clearing house or its nominee who is a member of a company may authorize a person or persons to act as its representative(s) at any meeting of the company. If more than one person is authorized, the authorization shall specify the number and class of shares in respect of which each representative is so authorized.	Existing law. This provision also applies to a class meeting by virtue of clauses 613 and 614.
598	Saving for more extensive rights given by articles	c.f. UKCA 2006 s.331		New provision. The articles may give more extensive rights to members or proxies than those given in Subdivision 9 of Division 1.
<b>Subdivision 10 : Annual General Meetings</b>				
599	Interpretation			New provision on the meaning of “accounting reference period” for the purpose of Division 1

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				Subdivision 10.
600	Requirement to hold annual general meeting			
(1)		CO s.111(1) c.f. UKCA 2006 s.336(1)	Every company shall in each year hold an AGM in addition to any other meetings. Not more than 15 months, or such longer period as the Registrar may authorize, shall elapse between the date of one AGM and the next.	Existing law modified in that the period for holding an AGM is a period of 9 months (for a guarantee company or a private company that is not a subsidiary of a public company) or 6 months (for a public company or a private company that is a subsidiary of a public company) after the end of the accounting reference period or any period extended by the court.
(2)		CO s.111(1) proviso	A company that holds its first AGM within 18 months of its incorporation need not hold it in the year of its incorporation or in the following year.	Existing law modified in that this provision replaces the provision that allows the first AGM to be held within 18 months of incorporation.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
(3)		c.f. UKCA 2006 s.336(2)		New provision on the period for holding an AGM where the accounting reference period is shortened by a directors' resolution.
(4)		CO s.122(1A)	The profit and loss account required to be laid before an AGM shall be made up to a date falling not more than 6 months, or, in the case of a private company (other than a private company which is a member of a corporate group consisting of a non-private company) and a company limited by guarantee, not more than 9 months before the AGM.	New provision defining a "private company" mentioned in subclauses (1), (2) and (3) as not including one that is, at any time during the financial year, a subsidiary of a public company.
(5) & (6)		CO s.111(1)	The Registrar may extend the period for the holding of an AGM.	Existing law modified in that this provision replaces the Registrar's power with the court's power to extend the period allowed for holding an AGM. The company must hold the AGM within the



<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				extended period.
(7)		CO s.111(2)	If an AGM is not held within the time limit, the court may call or direct the calling of, a general meeting.	Existing law.
(8)		CO s.111(3)	A general meeting held in pursuance of a court order shall be deemed to be an AGM; but where it is not held in the year in which the default in holding the AGM occurred, it shall not be so treated unless the company so resolves at that meeting.	Existing law modified such that, subject to the court's directions, a general meeting held pursuant to the court's directions is regarded as an AGM in respect of the financial year in which the default in holding an AGM occurred.
(9)		CO s.111(5)	It is an offence if default is made in holding an AGM in accordance with s.111(1), or in complying with any direction given by the court under s.111(2).	Existing law modified to provide for offences relating to the modified and new provisions.
601	Exemption of dormant	CO s.344A(4) & (6)(a)	A dormant company is exempt from the requirement to hold an	Existing law. The terms "accounting transaction" (which

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	company from requirement to hold annual general meeting		AGM and the exemption ceases as from the date of a relevant accounting transaction.	replaces “relevant accounting transaction”) and “dormant company” are defined in clauses 2(1) and 5.
602	Circumstances in which company not required to hold annual general meeting	CO s.111(6)	A company is not required to hold an AGM if everything that is to be done at the meeting is done by a written resolution and a copy of each document required to be laid at the meeting is provided to each member in the manner prescribed.	Existing law plus new provisions that provide that a company is not required to hold an AGM if – (a) the company has only one member (subclause (2)(a)); or (b) the company has resolved to dispense with holding an AGM and no member has required an AGM to be held (subclause (2)(b)).
603	Dispensation with annual general meeting	SCA s.175A(1) to (6)		New provision dispensing with the holding of an AGM by passing a unanimous resolution which has continuous effect (subclauses (1) to (4)). A member may, by notice given within the time specified, require an AGM to be held

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				(subclause (5)).
604	Revocation of resolution dispensing with annual general meeting	c.f. UKCA 1985 s.366A(5) and 379A(3); and SCA s.175A(8) & (9)		New provision. A resolution dispensing with the holding of an AGM may be revoked by passing an ordinary resolution to that effect (subclause (1)). The company is not required to hold an AGM after the revocation in certain circumstances (subclause (2)).
605	Members' power to request circulation of resolution for annual general meeting	CO s.115A(1)(a), (2) & (4)  c.f. UKCA 2006 s.338(1), (3) & (4)	It is the company's duty, on the requisition of the specified number or percentage of members, and at their expense, to give notice to members of a proposed resolution for the next AGM.  The requisition must be deposited at the registered office within the specified time together with a sum reasonably sufficient to meet the required expenses.	Existing law plus new provisions – (a) the 50 members that constitute one of the thresholds are required to have a right to vote on the resolution (subclause (2)(b)); and (b) requests by members in electronic form are allowed (subclause (3)(a)).

Clause	Contents	Derivation	Position in CO	Position in CB
606	Company's duty to circulate resolution for annual general meeting	CO s.115A(1)(a), (3), (6) & (7)  c.f. UKCA 2006 s.339(1), (4) & (5)	<p>Circulation of members' proposed resolution for an AGM is at the expense of the requisitionists.</p> <p>A copy of the notice of the proposed resolution shall be served on the members entitled to have notice of the meeting sent to them in any manner permitted for service of the notice. Notice of the proposed resolution shall be given to any other member by giving notice of the general effect of the resolution. Failure to comply with the requirements is an offence.</p> <p>The business which may be dealt with at an AGM includes any resolution of which notice is given in accordance with s.115A and notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of 1 or more members.</p>	<p>Existing law modified –</p> <p>(a) the expenses of circulating members' proposed resolutions if received in time for sending with the notice of meeting are borne by the company (subclause (1)); and</p> <p>(b) the requirement to give notice of resolutions to members not entitled to have notice of the meeting is removed.</p>

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 11 : Records of Resolutions and Meetings</b>				
607	Written record where company has only one member	CO s.116BC(1), (5) & (7)	Where a company has only one member who takes any decision that may be taken by the company in a general meeting, he shall provide the company with a written record of that decision. Failure to do so is an offence but the failure shall not affect the validity of the decision.	Existing law.
608	Records of resolutions and meetings, etc.	CO s.116B(7) & (10), 116BC(3) & (6) and 119(1) & (4) c.f. UKCA 2006 s.355	<p>Every company must enter in books kept for that purpose the minutes of all proceedings at general meetings and at meetings of its directors. Failure to do so is an offence.</p> <p>A company must enter into a book kept for that purpose a record of written resolutions and written record of decisions of the sole member under s.116BC in the same way as minutes of a general</p>	<p>Existing law modified plus new provisions –</p> <p>(a) the provision on minutes of directors’ meetings is moved to clause 472 in Part 10;</p> <p>(b) the records are not required to be kept in or entered into a “book”;</p> <p>(c) a new subclause (2) requires the records to be kept for at least 20 years; and</p> <p>(d) the maximum fine and daily default fine are increased</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			meeting are kept. Failure to do so is an offence.	from level 3 to level 5 and \$300 to \$1,000 respectively.
609	Place where records must be kept available for inspection	CO s.119A c.f. UKCA 2006 s.358(1), (2), (5) & (6)	<p>The books containing the minutes of proceedings of any general meeting, meeting of directors or of managers, shall be kept at the registered office. They may be kept at another office in HK where the work of making up the books is done.</p> <p>Every company shall notify the Registrar of the place where the books are kept and of any change in that place unless they have at all times been kept at the registered office.</p> <p>Non-compliance with the provisions is an offence.</p>	<p>Existing law modified –</p> <p>(a) minutes of meetings of directors or managers are removed from the scope of this provision;</p> <p>(b) the place (other than the registered office) at which the records may be kept is to be prescribed in regulations;</p> <p>(c) there is no requirement to notify the Registrar of any change of the place at which the records are kept if the change is due to a change of the registered office; and</p> <p>(d) the maximum daily default fine is increased from \$700 to \$1,000.</p>
610	Right to inspect and	CO s.120 c.f. UKCA 2006	The minute books of any general meeting shall be open to	Existing law modified – (a) the time and duration for

Clause	Contents	Derivation	Position in CO	Position in CB
	request copy	s.358(3) to (7)	inspection by a member without charge. A copy of such minutes shall be provided to a member upon request and at a charge. Failure to do so is an offence. The court may compel an immediate inspection or direct that copies be sent to the member.	inspection, the fee and period for provision of a copy and the remedy and offence for refusal of inspection will be provided in the regulations; and (b) the maximum fine and daily default fine are increased from level 3 to level 5 and \$300 to \$1,000 respectively.
611	Records as evidence of resolutions etc.			
(1)		CO s.116B(8)	Where a record of a written resolution purports to be signed by a director or secretary, the record is evidence of the proceedings in agreeing to the resolution; and, until the contrary is proved, the requirements of the CO with respect to those proceedings shall be deemed to have been complied with.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
(2) & (3)		CO s.119(2) & (3)  c.f. UKCA 2006 s.356(4) & (5)	<p>All minutes of proceedings at general meetings and at meetings of directors purporting to be signed by the chairman of the meeting or of the next succeeding meeting, shall be evidence of the proceedings.</p> <p>Where such minutes have been made, the meetings shall, until the contrary is proved, be deemed to have been duly held and convened, and all proceedings at the meetings deemed to have taken place, and all appointments shall be deemed to be valid.</p>	Existing law modified – (a) the provision relating to minutes of directors’ meetings are moved to clause 473 in Part 10; and (b) the reference to meeting of managers is removed.
(4)		CO s.116BC(2)	Where a sole member provides the company with a written record of a decision, that record shall be sufficient evidence of the decision having been taken by the member.	Existing law.



<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
612	Registration of and requirements relating to certain resolutions, etc.	CO s.117  c.f. UKCA 2006 s.29(1) , 30(1) to (3), 32(1), (3) & (4) and 36(1), (3) & (4)	<p>A printed copy of the specified resolutions or agreement shall be forwarded to the Registrar.</p> <p>Where articles have been registered, a copy of the resolution or agreement shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.</p> <p>Where articles have not been registered, a printed copy of the resolution or agreement shall be forwarded to any member at his request, on payment of a fee.</p> <p>Failure to comply with the provisions is an offence.</p>	<p>Existing law modified –</p> <p>(a) the scope is extended to cover Court orders (subclauses (1)(g), (4) and (5)) and written memorandum of a resolution or agreement not in writing (subclause (6));</p> <p>(b) the period for delivering a copy of the resolution or agreement to the Registrar is changed from 15 days to 14 days (subclause (2));</p> <p>(c) the requirement to pay for a copy of the resolution or agreement is removed (subclause (5)); and</p> <p>(d) the fine per copy imposed under s.117(6) of the CO is replaced by a maximum fine at level 3 (subclause (8)).</p>
<b>Subdivision 12 : Application to Class Meetings</b>				
613	Application to class meetings	CO s.63A(6) & (8), 114C(8),	Relevant provisions in the CO and in the articles relating to general	<p>Existing law modified –</p> <p>(a) the threshold for the quorum</p>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	of companies with share capital	114E, 115 and 118(b)  c.f. UKCA 2006 s.334	meetings shall apply with necessary modifications in relation to a meeting in connection with the variation of class rights, subject to the provisions in relation to quorum and the right to demand a poll.	for a variation of class rights meeting based on the nominal value of issued shares is replaced by a threshold based on the total voting rights (subclause (4));  (b) plus a new provision in subclause (5).
614	Application to class meetings of companies without share capital	c.f. UKCA 2006 s.335		New provision in relation to class meetings of a company without share capital.
<b>Division 2 : Registers</b>				
<b>Subdivision 1 : Preliminary</b>				
615	Interpretation			New provision on the meaning of “prescribed” for the purpose of Division 2.
<b>Subdivision 2 : Register of Members</b>				
616	Interpretation			New provision on the meaning of “branch register” for the purpose of Division 2 Subdivision 2.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
617	Register of members	CO s.95(1)(a) to (c) and proviso (ii) & (4)  c.f. UKCA 2006 s.113(1) to (3), (7) & (8) and 121	Every company shall keep a register of members and enter the prescribed particulars of members in the register. Record of a past member must be kept for 30 years after he ceases to be a member. Default in compliance is an offence.	Existing law modified plus new provision – (a) the period for keeping the records of past members after they cease to be members is reduced from 30 years to 20 years (subclause (6)); and (b) a new subclause (4) provides for the time limit for entering the particulars of members in the register of members.
618	Place where register must be kept available for inspection	CO s.95(2) to (4)  c.f. UKCA 2006 s.114(1), (2), (5) & (6)	The register of members shall be kept at the registered office or the office at which the work of making up the register is done. The company shall send to the Registrar a notice of the place where the register is kept and any change in that place, unless the register is at all times kept at the registered office. Default in compliance is an offence.	Existing law modified – (a) the place (other than the registered office) at which the register may be kept is to be specified in the regulations made under clause 648 (subclause (1)); and (b) there is no requirement to notify the Registrar of any change of the place at which the register is kept if the

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>change is due to a change of the registered office.</p> <p>The methods or means for keeping the register are dealt with in clause 646.</p>
619	Statement that company has only one member	CO s.95A	It requires certain information to be entered in the register of members when the number of members falls to one and when it increases from one to two or more.	Existing law.
620	Index of members	CO s.96 c.f. UKCA 2006 s.115	A company with more than 50 members shall keep an index of members and enter in the index any alteration in the register of members. The index shall be kept at the same place as the register of members. Default in compliance is an offence.	Existing law modified – (a) the period for making alteration in the index is shortened from 14 to 7 days (subclause (2)); and (b) the maximum fine and daily default fine are increased from level 3 to level 4 and \$300 to \$700 respectively (subclause (5)).

Clause	Contents	Derivation	Position in CO	Position in CB
621	Right to inspect and request copy	CO s.98  c.f. UKCA 2006 s.116(1) & (2), 118 and 120	The register and index of members shall be open to inspection by any member without charge and other persons on payment of a prescribed fee. The company shall send a copy of the register or any part thereof to a member or other person when so required and on payment of the prescribed fee, default of which is an offence. The court may compel inspection or the provision of copies in case of refusal or default.	Existing law modified plus new provisions – (a) the time, duration and fee for inspection and to provide copy; and the remedy and offence for refusal of inspection will be provided in regulations; (b) the maximum fine and daily default fine are increased from level 3 to level 4 and \$300 to \$700 respectively (subclause (6)); (c) the requirement to provide copy is extended to the index of members' names (subclause (2)(a)); (d) new subclauses (4) & (5) require the company to inform a person of the most recent date on which alterations were made /whether there is any alteration; and (e) a new subclause (8) provides that the court must not order

Clause	Contents	Derivation	Position in CO	Position in CB
				the provision of copy register or index if the right is being abused.
622	Consequences of contravening requirements as to register owing to other person's default	CO s.98A	Where a company has delegated the work of making up the register of members to an agent and the register is kept at his office, he will be liable to the same penalties for default as if he were an officer of the company and the same court orders compelling inspection etc. may be made against him and his officers and servants.	Existing law modified by confining the scope of this provision to a failure to provide copy. As regards the contravention of requirements in relation to company records owing to other person's default, the FS is empowered to make regulations in respect thereof under clause 648(4)(d).
623	Power to close register of members	CO s.99(1)(a), (1A), (2)(a), (3) & (4)	A company may close its register of members by advertisement or in accordance with listing rules (if it is a listed company) for up to 60 days in a year. The company shall furnish to any person on demand a certificate stating the period for which, and by whose authority, the register is closed.	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
624	Power of Court to rectify register	CO s.100	It provides for the court's power to order rectification of the register of members and payment of damages in certain circumstances.	Existing law.
625	Trusts not to be entered in register	CO s.101	No notice of trust may be entered in the register of members, or be received by the Registrar.	Existing law.
626	Register to be proof in the absence of contrary evidence	CO s.102	The register of members is prima facie evidence of the matters therein. There is a time limit of 30 years for adducing evidence to challenge the accuracy of an entry in the register.	Existing law except that the period of 30 years is changed to 20 years.
627	Branch register of members	c.f. UKCA 2006 s.129(1) and 130(1); and SCA s.196(2)	S.103 allows a company to apply for a licence to keep a register of members in any place outside HK at or near which it transacts its business.	New provision that replaces the licence system and criteria for a branch register of members under s.103 of the CO – (a) the branch register may be kept outside HK in the place where there are resident members (subclause (1));

Clause	Contents	Derivation	Position in CO	Position in CB
				(b) the company must notify the Registrar of the address, and of any change in the address, where the branch register is kept (subclauses (2) & (3)).
628	Keeping of branch register	CO s.104(2), (3), (6) & (7) and Twelfth Schedule  c.f. UKCA 2006 s.131(4) and 132	A branch register shall be kept in the same manner as a principal register. Copy of entries in the branch register must be sent to the registered office and a duplicate branch register must be kept with the principal register. Default in compliance is an offence.	Existing law modified – (a) the maximum fine and daily default fine are increased from level 3 to level 4 and \$300 to \$700 respectively (subclause (6)); and (b) the offence in s.104(7) of the CO that applies to a person who makes up the principal register is removed.
629	Transactions in shares registered in branch register	CO s.104(4)	Shares registered in the branch register must be distinguished from shares in the principal register and no transaction relating to shares in the branch register may be registered in any other register.	Existing law.



Clause	Contents	Derivation	Position in CO	Position in CB
630	Discontinuance of branch register	CO 104(5)  c.f. UKCA 2006 s.135; and SCA s.196(2) & (6)	When a branch register is discontinued, all entries therein shall be transferred to another branch register or the principal register.	Existing law modified plus new provision – (a) the “other branch register” in s.104(5) of the CO to which the entries in a discontinued branch register are to be transferred is required to be “in the same place outside Hong Kong” (subclause (2)); (b) a new subclause (3) provides for notification of discontinuance to the Registrar; and (c) it is an offence for failing to register a notice of discontinuance (subclause (4)).
631	Provisions as to branch registers of non-Hong Kong companies kept	CO s.106	The CE in Council may by order direct that a branch register of a company incorporated in a place outside HK shall be kept at a specified place in HK and that the provisions on inspection and	Existing law except that the authority to make an order is changed from the Chief Executive in Council to the FS.

Clause	Contents	Derivation	Position in CO	Position in CB
	in Hong Kong		rectification shall apply to the branch register with necessary modifications.	
<b>Subdivision 3 : Register of Directors</b>				
632	Register of directors	CO s.158(1) & (8) and 158A c.f. UKCA 2006 s.162(1) to (4), (6) & (7)	A company is required to keep a register of directors and secretaries and a failure to do so is an offence. The register is to be kept at the company's registered office, or at an office in HK of a person undertaking the work of making up the register for the company. The company is required to notify the Registrar of the place where the register is kept and any change in that place. Default in compliance is an offence.	Existing law modified – (a) separate registers of directors and company secretaries are required instead of a combined register; (b) the place (other than the registered office) at which the register may be kept will be prescribed by regulations made under clause 648 (subclause (3)(b)); (c) there is no requirement to notify the Registrar of any change of the place at which the register is kept if it is due to a change of the registered office (subclause (5)); (d) the maximum fine and daily default fine for an offence

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>under subclauses (1) &amp; (2) are increased from level 3 and \$300 under s158(8) of the CO to level 4 and \$700 (subclause (7)); and</p> <p>(e) the maximum fine for an offence under subclauses (3) to (5) is reduced from level 5 under s.158A(3) of the CO to level 4 (subclause (7)).</p>
633	Right to inspect and request copy	CO s.158(7), (8) & (9) c.f. UKCA 2006 s.162(5)	The register of directors and secretaries shall be open to inspection by any member without charge and by any other person on payment of a fee, default of which is an offence. The court may compel inspection in case of refusal.	<p>Existing law modified plus new provisions –</p> <p>(a) the time, duration and fee for inspection and the remedy and offence for refusal of inspection will be provided in regulations made under clause 648;</p> <p>(b) new provisions in subclauses (2) to (7) require the provision of copies and provide for related remedies and offences;</p> <p>(c) new provisions in subclauses</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>(4) and (5) require the company to inform a person of the most recent date on which alterations have been made; and</p> <p>(d) a new subclause (7) provides that the court must not order the provision of copy if the right is being abused.</p>
634	Particulars of directors to be registered	<p>CO s.158(2), (2A), (2B), (10)(b), (d) to (f)</p> <p>c.f. UKCA 2006 s.163(1) to (4), 164 and 166(1)</p>	It sets out the particulars of directors and reserve directors required to be contained in the register of directors and secretaries.	<p>Existing law modified plus new provisions –</p> <p>(a) the difference in requirements depends on whether a company is a private company (other than one that is a member of a corporate group of which a listed company is a member) instead of whether it is listed or unlisted;</p> <p>(b) there is a new requirement to state the correspondence address of a director (subclause (1)(a)(ii), (2)(b) &amp;</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				(3)(b)); (c) a new subclause (7) gives the FS power to amend the requirements by notice in the gazette.
635	Protection of certain particulars from inspection			New provision allowing a company to withhold the residential address and identity number contained in its register of directors from a person who inspects it or requests for a copy of it.
636	Duty to notify Registrar of appointment and change	CO s.158(4), (4A), (4AA), (5A) & (8) c.f. UKCA 2006 s.167(1), (2), (4) & (5)	It requires a company to notify the Registrar of the appointment of a director or reserve director and any change in the particulars contained in its register of directors and secretaries. A company is required to notify the Registrar of the nomination of a reserve director. A statement of acceptance of appointment or	Existing law modified plus new provision – (a) the maximum fine and daily default fine are respectively increased from level 3 and \$300 to level 4 and \$700 (subclause (6)); and (b) a new provision in subclause (5) in relation to the Registrar’s power to make

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			nomination shall also be sent to the Registrar. Default in compliance is an offence.	protected address available for inspection.
637	Duty of director to make disclosure	CO s.158B	A director and a reserve director have a duty to disclose his particulars for the purpose of inclusion in the register of directors.	Existing law except that the maximum fine for an offence is reduced from level 6 to level 4 and the daily default fine is removed (subclause (3)).
638	Registrar to keep an index of directors	CO s.158C(1)	The Registrar shall keep an index of directors and reserve directors containing the specified particulars. The index is open for inspection by any person on payment of a fee.	Existing law plus new subclause (4) which excludes the usual residential address and the full identification number from public inspection.
<b>Subdivision 4 : Register of Company Secretaries</b>				
639	Register of company secretaries	CO s.158(1) & (8), and 158A c.f. UKCA 2006 s.275(1) to (4), (6) & (7)	See “Position in CO” for clause 632.	Existing law modified – (a) separate registers of directors and of company secretaries are required instead of a combined register; (b) the place (other than the

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>registered office) at which the register may be kept will be prescribed by regulations made under clause 648;</p> <p>(c) there is no requirement to notify the Registrar of any change of the place at which the register is kept if it is due to a change of the registered office;</p> <p>(d) the maximum fine and daily default fine for an offence under subclauses (1) &amp; (2) are increased from level 3 and \$300 under s.158(8) of the CO to level 4 and \$700 (subclause (7)); and</p> <p>(e) the maximum fine for an offence under subclauses (3) to (5) is reduced from level 5 under s.158A(3) of the CO to level 4 (subclause (7)).</p>

Clause	Contents	Derivation	Position in CO	Position in CB
640	Right to inspect and request copy	CO s.158(7)  c.f. UKCA 2006 s.275(5) to (7)	See “Position in CO” for clause 633.	Existing law modified plus new provisions – (a) the time, duration and fee for inspection and the remedy and offence for refusal of inspection will be provided in regulations made under clause 648; (b) new provisions in subclauses (2) to (7) require the provision of copies and provide for related remedies and offences; (c) new provisions in subclauses (4) and (5) require the company to inform a person of the most recent date on which alterations have been made; and (d) a new subclause (7) provides that the court must not order the provision of copy of the register if the right is being abused.



<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
641	Particulars of company secretaries to be registered	CO s.158(3), (10)(b), (e) & (f)  c.f. UKCA 2006 s.277(1) to (4), 278(1)(a) & (b), (2) and 279(1)	It sets out the particulars of secretaries required to be contained in the register of directors and secretaries.	Existing law modified plus new provisions – (a) the requirement to give particulars of the “usual residential address” is replaced by a requirement to give particulars of the correspondence address (subclause (1)(a)(ii)); and (b) a new subclause (6) gives the FS power to amend the requirements by notice in the gazette.
642	Protection of identification number from inspection			New provision allowing a company to withhold the identity number of company secretaries from a person who inspects the register or requests for a copy of it.
643	Duty to notify Registrar of appointment and change	CO s.158(4) & (8)	A company shall notify the Registrar of the appointment of a secretary and any change in the particulars contained in its register	Existing law except that the maximum fine and daily default fine are respectively increased from level 3 and \$300 to level 4

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			of directors and secretaries. Default in compliance is an offence.	and \$700 (subclause (3)).
644	Duty of company secretary to make disclosure	CO s.158B	A secretary shall disclose his particulars for the purpose of inclusion in the register of secretaries.	Existing law except that the maximum fine is reduced from level 6 to level 4 and the daily default fine is removed (subclause (2)).
<b>Division 3 : Company Records</b>				
645	Meaning of company records	c.f. UKCA 2006 s.1134		New provision on the meaning of “company records”.
646	Form of company records	CO s.348C(1) to (3)  c.f. UKCA 2006 s.1135(1) to (4)	It provides for the manner of keeping company records and allows them to be kept in legible or non-legible form, provided that they can be reproduced in legible form. The company’s duty to allow inspection of company records is treated as a duty to allow inspection of a reproduction of the records in legible form.	Existing law modified plus new provisions – (a) the term “otherwise than in legible form” is replaced by “electronic form” (subclauses (2), (3) & (4); (b) a new subclause (1) requires a company to adequately record information for future reference; and

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				(c) a new offence in subclause (5) for contravention of subclauses (1) and (3).
647	Duty to take precautions against falsification	CO s.348C(4)	A company is required to take measures that protect company records from falsification and facilitate the discovery of falsification, if they are not kept in bound books. Default in compliance is an offence.	Existing law.
648	Regulations about keeping and inspection of company records and provision of copies	c.f. UKCA 2006 s.1136(1), (3) to (6) and 1137(1) to (5)		New provision that empowers the FS to make regulations in respect of the keeping, inspection and provision of copies of company records. The regulations may provide that it is an offence if any of the regulations is contravened.
<b>Division 4 : Registered Office and Publication of Company Names</b>				
649	Registered office of company	CO s.92	A company shall have a registered office in HK. Any change in the registered office must be notified	Existing law except that the maximum fine and daily default fine are respectively increased

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			to the Registrar within 14 days. A failure to do so is an offence.	from level 3 and \$300 to level 5 and \$1,000 (subclause (5)).
650	Requirement to disclose company name, etc.	c.f. UKCA 2006 s.82(1) to (3)		New provision that empowers the FS to make regulations requiring a company to display, state or provide prescribed information in relation to disclosure of a company's name and registered office.
651	Criminal consequences of failure to make required disclosures	c.f. UKCA 2006 s.84(1)		New provision. The regulations made under clause 650 may provide that it is an offence if any of the regulations is contravened.
652	Civil consequence of failure to make required disclosures	CO s.93(5)(b)	It provides for the civil consequences if a person signs on behalf of a company certain documents in which the company's name is not mentioned in the prescribed manner.	Existing law except that the words "contract, deed" are removed, as these words do not appear in the latter part of section 93(5) of the CO.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Division 5 : Annual Return</b>				
653	Requirement to deliver annual return	CO s.107(3) & (3A) and 109(1), (1A) & (4) c.f. UKCA 2006 s.854 and 858(1) & (2)	A company is required to complete and forward an annual return to the Registrar within the specified time limit. Failure to comply with the requirements is an offence. Section 107(3) & (3A) provide that a company need not make an annual return in the year of its incorporation.	Existing law modified plus new provisions – (a) the time limit for non-private companies to file annual returns is specified by reference to the accounting reference period instead of the AGM (subclause (4)); (b) the maximum daily default fine is increased from \$700 to \$1,000 (subclause (6)); and (c) new subclauses (7) & (8) provide for a magistrate’s power to order the filing of the annual return and the related offence.
654	Exemption of dormant company from requirement to deliver annual return	CO s.344A(4) & (6)(a)	A dormant company is exempt from the requirement to file annual returns and other specified requirements. The exemption ceases when the company enters into a relevant accounting	Existing law. See “Position in CB” for clause 601.

Clause	Contents	Derivation	Position in CO	Position in CB
			transaction.	
655	Contents of annual return	CO s.107(1), (2) & (7)	Every company must make an annual return containing the specified information. The Registrar may specify different forms of annual return for different types of company.	Existing law. The particulars required to be stated in an annual return are moved to Schedule 6.
656	Construction of reference to annual return	c.f. UK The Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008 Schedule 2 para.81(3)		New provision on the construction of references to <i>last annual return</i> and <i>an annual return delivered in accordance with clause 653</i> .
<b>Schedule 6 : Information to be Contained in Annual Return and Documents by which Annual Return must be Accompanied</b>				
<b>Part 1 : Information to be Contained in Annual Return</b>				
1		CO s.107(2)	It sets out the information to be	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			contained in an annual return of a company.	
2		c.f. UKCA 2006 s.856B(2) <sup>1</sup>		New provision requiring additional information, relating to members who held 5% or more of shares, to be contained in the annual return of a listed company.
3				New provision to state that the residential address and full identity number of a director or reserve director need not be included in an annual return.
4				New provision to state that the full identity number of a company secretary need not be included.
5		CO s.107(4)	The information in a branch register of members is required to be included in the annual return.	Existing law.

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<sup>1</sup> Section 856B CA 2006 was added pursuant to The Companies Act 2006 (Annual Return and Service Addresses) Regulations 2008 section 7(2).

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Part 2 : Additional Information to be Contained in Annual Return of Private Company</b>				
6		CO s.110	It requires a private company to send with its annual return a certificate that the company has not issued any invitation to the public to subscribe for its share or debentures.	Existing law.
<b>Part 3 : Documents by which Annual Return of Public Company or Company Limited by Guarantee must be Accompanied</b>				
7		CO s.109(3)	It sets out the accounts and report, certified in the manner described, by which an annual return of a non-private company must be accompanied.	Existing law except that a manager is removed from the persons able to provide certification of true copies of the documents. The manner of certification of translation is provided in clause 4 of Part 1.
<b>Schedule 10: Transitional and Saving Provisions</b>				
92-113	Transitional and Saving Arrangements for Part 12			New provisions to provide transitional and saving arrangements in the following areas – (a) Interpretation;



Clause	Contents	Derivation	Position in CO	Position in CB
				<ul style="list-style-type: none"> <li>(b) Written resolution;</li> <li>(c) Resolutions at meetings;</li> <li>(d) Calling meetings;</li> <li>(e) Notice of meetings;</li> <li>(f) Members' statements;</li> <li>(g) Procedure at meetings;</li> <li>(h) Voting at meetings;</li> <li>(i) Proxies and corporate representatives;</li> <li>(j) Annual general meetings;</li> <li>(k) Records of resolutions and meetings;</li> <li>(l) Application to class meetings;</li> <li>(m) Register of members;</li> <li>(n) Inspection of register of directors and secretaries;</li> <li>(o) Register of directors;</li> <li>(p) Particulars to be registered;</li> <li>(q) Supplementary provisions relating to particulars to be registered;</li> <li>(r) Register of company secretaries;</li> <li>(s) Particulars to be registered;</li> <li>(t) Supplementary provisions</li> </ul>

Clause	Contents	Derivation	Position in CO	Position in CB
				relating to particulars to be registered; (u) Registered office of company; and (v) Annual return.