



Guide on Communications to and by Companies

Part 18 (Communications to and by Companies) of the Companies Ordinance (Cap. 622) (“the CO”) relates to communications in electronic or hard copy form between a company and its members, debenture holders, and other persons that are authorised or required to be made under a provision of the CO or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (the new title of Cap. 32 on commencement of the CO on 3 March 2014) (“applicable provision”). It also deals with communications sent by a company to its members and debenture holders by means of a website.

2. In its application in relation to documents or information to be sent or supplied to the Registrar of Companies, Part 18 of the CO has effect subject to Part 2 of the CO.

3. This Guide summarises the key provisions under Part 18 of the CO. Any reference to “document” or “information” in parts (B) and (C) of this Guide is a reference to document or information that is authorised or required by an applicable provision to be sent or supplied by or to a company, as the case may be.

4. This Guide shall be effective from 3 March 2014 and will replace, from the same date, the Guide entitled “Guide on Communications by a Company to Another Person Other than the Registrar” previously issued by the Companies Registry. This Guide should be read with the relevant provisions of Part 18 of the CO. You are advised to seek professional advice in case of doubt.

(A) Service of Document on Company (Division 2)

5. The mode of service of a legal document on a company is governed by section 827, which provides that a document (which includes a summons, notice, order and any other legal process) may be served on a company by sending it by post to the company’s registered office or by leaving it at the registered office.

(B) Other Communication to Company by Person who is not Company (Division 3)

I. Communication in electronic form (section 828)

- (a) A document or information may be sent or supplied to a company in electronic form if the company has so agreed, generally or specifically, or is regarded as having so agreed under a provision of the CO;

- (b) A document or information sent or supplied in electronic form is sufficiently authenticated if the person's identity is confirmed in a manner specified by the company or the communication contains a statement of the person's identity and the company has no reason to doubt the truth of that statement;
- (c) A document or information that is sent or supplied by electronic means should be made to an address specified by the company (or an address regarded under a provision of the CO as having been so specified);
- (d) A document or information that is sent or supplied by electronic means is deemed to have been received by the company at the end of the period as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate and unless the contrary is proved;
- (e) If the articles, instrument or agreement does not specify any period, the period is 48 hours;
- (f) A document or information sent or supplied in electronic form may be sent by hand or by post (e.g. by sending a diskette or CD-ROM) to an address specified by the company or the company's registered office or to an address to which it may be sent or supplied as required by a provision of the CO; and
- (g) A company may revoke its agreement to communicate in electronic form by giving a notice of revocation of at least 7 days or such longer period as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate.

II. Communication in hard copy form (section 829)

- (a) A document or information may be sent or supplied in hard copy form by hand or by post to an address specified by the company or the company's registered office or an address as required by a provision of the CO to be sent or supplied;
- (b) A document or information is sufficiently authenticated if it is signed by the person;
- (c) Where the document or information is sent or supplied by post to a company, it is deemed to have been received by the company on the second business day after posting or otherwise as specified in the company's articles (for members) or instrument creating the debenture (for debenture holders), or any other agreement (for other persons), whichever is the later and unless the contrary is proved; and
- (d) If the document or information is sent or supplied by hand, it is deemed to have been received by the company at the time when the document or information is delivered.

III. Communication in other forms (section 830)

A document or information may be sent or supplied in a form or manner that has been agreed by the company otherwise than in electronic or hard copy form.

(C) Other Communication by Company to Another Person (Division 4)

I. Communication in electronic form (other than by website) (sections 831 and 837)

- (a) Communication in electronic form can be made by a company only with the recipient's agreement (or where the recipient is a company, the recipient is regarded under a provision of the CO as having so agreed);
- (b) A document or information sent or supplied in electronic form by a company is sufficiently authenticated if the identity of the company is confirmed in a manner as specified by the recipient; or the communication contains a statement of the company's identity and the recipient has no reason to doubt the truth of that statement;
- (c) Communication by electronic means should be made to an address specified by the recipient (or, where the recipient is a company, an address specified for the purpose or regarded under a provision of the CO as having been so specified);
- (d) A document or information that is sent or supplied by electronic means is deemed to have been received by the recipient at the end of the period -
 - (i) where the recipient is not a company, as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons);
 - (ii) where the recipient is a company, as specified in the company's articles (for members), the recipient's articles (where the company is a member of the recipient), the instrument creating the debentures (for debenture holders or where the company is a debenture holder of the recipient) or any other agreement (for other persons);unless the contrary is proved;
- (e) If the articles, instrument or agreement does not specify any period, the document or information is deemed to have been received at the end of the period of 48 hours, unless the contrary is proved;
- (f) A document or information sent in electronic form may also be sent by hand or by post (e.g. by sending a diskette or CD-ROM) to an address specified by the recipient (or an address which a provision of the CO authorises or requires the same to be sent or supplied) or an address as shown in the company's registers of members, debenture holders, directors or company secretaries, as the case may be, or where the recipient is a company, its registered office address. If the company does not have an address of the recipient as specified above, the document or information may be sent to the recipient's last known address;
- (g) A recipient may revoke his/her/its agreement to communicate in electronic form by giving a notice of revocation of at least 7 days or such longer period -

- (i) where the recipient is not a company, as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders), or any other agreement (for other persons);
 - (ii) where the recipient is a company, as specified in the company's articles (for members), the recipient's articles (where the company is a member of the recipient), the instrument creating the debenture (for debenture holders or where the company is a debenture holder of the recipient), or any other agreement (for other persons); and
- (h) A member or debenture holder may request a document or information to be provided in hard copy form free of charge within 28 days from the date of receipt of an electronic copy and the company must send a hard copy of the document or information within 21 days of receiving the request. If the document or information requires an action to be taken by the member or debenture holder, the company must send or supply the hard copy within 7 days after the date of receiving the request.

II. Communication in hard copy form (section 832)

- (a) A document or information may be sent or supplied by hand or by post in hard copy form to an address specified by the recipient (or an address which a provision of the CO authorises or requires the same to be sent or supplied) or an address as shown in the company's registers of members, debenture holders, directors or company secretaries, as the case may be, or where the recipient is a company, its registered office address. If the company does not have an address of the recipient as specified above, the document or information may be sent to the recipient's last known address;
- (b) A document or information sent in hard copy form is sufficiently authenticated if it is signed by an officer of the company;
- (c) If a document or information is sent or supplied by a company by post to an address in Hong Kong, it is deemed to have been received by the recipient on the second business day after posting or the time:-
 - (i) where the recipient is not a company, as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders), or any other agreement (for other persons);
 - (ii) where the recipient is a company, as specified in the company's articles (for members), the recipient's articles (where the company is a member of the recipient), the instrument creating the debenture (for debenture holders or where the company is a debenture holder of the recipient), or any other agreement (for other persons);

whichever is the later and unless the contrary is proved; and

- (d) If the document or information is sent or supplied by hand, it is deemed to have been received by the recipient at the time when the document or information is delivered.

III. Communication by means of website (sections 833 and 837)

- (a) A company may communicate with its members or debenture holders by making a document or information available on a website if the member or debenture holder consents to such mode of communication. Members of a company are not allowed to communicate to the company by means of a website;
- (b) A member is deemed to have consented to website communications if the company's articles or a members' resolution provides to that effect, and a debenture holder is also deemed to have consented if the instrument creating the debenture or a debenture holders' resolution so provides;
- (c) A company may also seek the agreement of its members or debenture holders by individually requesting their consent. A member or debenture holder is deemed to have agreed to website communications if he/she has not responded to the company's request for consent where the request stated clearly the effect of a failure to respond within 28 days, unless it is proved that the person has not received the request. Where a member or debenture holder has not agreed to accept website communications, the company should not make the request again within a period of 12 months from the prior request;
- (d) Subject to paragraph (k) below, the company must notify the recipient of the posting of the document or information on the website, the date that it is available on the website, the address of the website, the place on the website where it may be accessed and how to access the document or information;
- (e) The document or information posted on the website must be in a form which enables the recipient to read and retain a copy;
- (f) A document or information is deemed to have been received by the person at the end of the period:-
 - (i) where the recipient is not a company, as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons);
 - (ii) where the recipient is a company, as specified in the company's articles (for members), in the recipient's articles (where the company is a member of the recipient), the instrument creating the debenture (for debenture holders or where the company is a debenture holder of the recipient) or any other agreement (for other persons);after its first posting on the website or after receipt of the notice of posting, whichever is the later;
- (g) If the articles, instrument or agreement does not specify any period, the period is 48 hours;
- (h) The document or information must be kept posted on the website for the whole of any period as specified in the relevant CO provision under which the document or information is sent, or 28 days if no period is specified;

- (i) A recipient may revoke his/her/its agreement to website communications by giving a notice of revocation of at least 7 days or such longer period:-
 - (i) where the recipient is not a company, as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders), or any other agreement (for other persons);
 - (ii) where the recipient is a company, as specified in the company's articles (for members), the recipient's articles (where the company is a member of the recipient), the instrument creating the debenture (for debenture holders or where the company is a debenture holder of the recipient), or any other agreement (for other persons);
- (j) A member or debenture holder may request the document or information to be provided in hard copy form free of charge within 28 days from the date of receipt of the same on the website and the company must send a hard copy of the document within 21 days of receiving the request. If the document or information requires an action to be taken by the member or debenture holder, the company must send or supply the hard copy within 7 days after the date of receiving the request; and
- (k) The company is exempt from notifying a person of the posting of documents or information on the website if: (a) communication in hard copy form has previously been returned by the post office as undeliverable at the person's specified address for communication in hard copy form; and (b) the company is unable to send notification to the person in electronic form because the person has not agreed to receive communications in electronic form or has not specified an electronic address (and, where the person is a company, is not deemed under the CO as having so agreed or specified).

IV. Communication in other forms (section 834)

A document or information may be sent or supplied by a company in a form or manner that has been agreed by the other person otherwise than in electronic or hard copy form or by making it available on a website.

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