

New Companies Ordinance
Briefing Notes on Part 18
Communications to and by Companies

INTRODUCTION

Part 18 (Communications to and by Companies) of the new Companies Ordinance (“new CO”) relates to communications in electronic or hard copy form between a company and its members, debenture holders, and other persons. It also deals with communications sent by a company to its members and debenture holders by means of a website.

POLICY OBJECTIVES AND MAJOR CHANGES

2. Part 18 aims at facilitating business by setting out the rules governing communications to and from companies in electronic form and hard copy form. New rules have been introduced governing communications to companies in electronic form and in hard copy form (paragraphs 4 and 5 below). Regarding the communications by a company to another person other than the Registrar of Companies (“the Registrar”), this Part restates Part IVAAA of the Companies Ordinance (Cap. 32) (“Cap. 32”) which was introduced through the Companies (Amendment) Ordinance 2010, covering communications in hard copy form, electronic form and by means of website (paragraphs 6 to 8 below).

3. Apart from the above, **Section 826** provides that for documents or information to be sent or supplied to the Registrar, Part 18 has effect subject to Part 2. **Section 827** preserves the Cap. 32 provisions that, for a document that is issued for the purpose of any legal proceedings, it may be served on a company by sending it by post to or leaving it at the company’s registered office.

KEY PROVISIONS IN THE NEW CO

Communications to a company in electronic form (Section 828)

4. **Sections 828 to 830** contain provisions dealing with communication from a natural person to a company which are modeled on the provisions in United Kingdom Companies Act 2006. **Section 828** provides that a document may be sent to a company in electronic form if the company has so agreed, generally or specially, or is regarded as having so agreed under a provision of the new CO. A company may revoke its agreement by giving a notice of revocation. The minimum period of the notice must be no less than 7 days or such longer period as specified in the company's articles of association (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate. A document is deemed to have been received by the company 48 hours after it has been sent by electronic means, or otherwise any 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. A document sent in electronic form may also be sent by hand or by post.

Communications to a company in hard copy form (Section 829)

5. **Section 829** provides that if the document or information is sent or supplied by post to a company by a natural person, 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 of association (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. If the document is sent by hand, it is deemed to have been received by the company when the document is delivered.

Communications by a company to another person (Sections 831 to 837)

6. Division 4 of Part 18 restates the existing Part IVAAA of Cap. 32. In particular, **Section 833** restates that a company may communicate with its members, debenture holders and other persons by means of a website, if so

permitted by its articles or a members' resolution and if the recipient consents to the use of website communications. If the persons are members or debenture holders, they will be taken to have agreed to receive information from the company via a website if they have been asked individually for their acceptance and have not responded within 28 days of the company's request, unless it is proved that the person has not received the request. Companies are required to notify intended recipients each time any material is published on a website. The document or information should be available on the website throughout the period specified by the applicable provisions of the new CO or the Companies (Winding Up and Miscellaneous Provisions) Ordinance, or where no such period is specified, a period of 28 days.

7. **Section 833(10)** provides an exemption to relieve a company from notifying or seeking agreement from the other person for communication by means of website if communication in hard copy form has been returned by the post office as undeliverable at that other person's last known address and sending information by other electronic means is not possible.

8. **Section 833(12)(b)** provides that a document is deemed to have been received by the intended recipient 48 hours after the document is first made available on the website or after receipt of the notice of the available date (whichever is the later). The 48 hours is subject to any period 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.

ACTIONS TO BE TAKEN BY STAKEHOLDERS

9. Existing companies may wish to amend their articles, instruments creating debentures or any other agreements, as appropriate, to make provisions for the following matters -

- Period specified deeming receipt of document or information in electronic form or by means of website. If the articles, instrument or agreement do/does not specify the period, the period is 48 hours (**Section 823(5)** of the new CO).

- Manner of sending documents or information to joint holders of shares or debentures (**Section 835** of the new CO).
- Manner of sending document or information where a holder of shares is dead or bankrupt (**Section 836** of the new CO).

Companies Registry

March 2013