



## **Guide on Communications by a Company to Another Person Other than the Registrar**

Companies (Amendment) Ordinance 2010 introduces a new Part IVAAA in the Companies Ordinance (the “CO”) on communications by a company to another person other than the Registrar (the “recipient”), covering communications in hard copy form, electronic form and by means of website.

2. The relevant provisions of the new Part are summarised below.

### **A. Communication in hard copy form (section 168BAF)**

- (a) A document may be sent by hand or by post in hard copy form to an address specified by the recipient or an address as shown in the company’s registers of members and debenture holders, or register of directors and secretaries, as the case may be, or where the recipient is a company, its registered office address. If the company does not have the recipient’s address, the document may be sent to the recipient’s last known address;
- (b) A document 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 following working day after posting or otherwise specified in the company’s articles of association (“articles”) (for members) or instrument creating the debenture (for debenture holders), or any other agreement (for other persons), whichever is the later; and
- (d) If the document is sent by hand, it is deemed to have been received by the recipient at the time when the document is delivered.

### **B. Communication in electronic form (other than by website)(section 168BAG)**

- (a) Communications by electronic means can be made by a company only with the recipient’s agreement to an address specified by the recipient;
- (b) A document sent 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) A document is deemed to have been received by the recipient 48 hours after it has been sent by a company by electronic means, or any 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;
- (d) A document sent in electronic form may also be sent by hand or by post (e.g. by sending a diskette or CD-ROM);
- (e) A recipient may revoke his/her 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; and
- (f) A member or debenture holder may request 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 within 21 days of receiving the request. If the document 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.

**C. Communication by means of website (section 168BAH)**

- (a) If permitted by a company's articles, a members' resolution or an instrument creating the debenture, a company may communicate with its members or debenture holders by making the 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 website;
- (b) A member or debenture holder is deemed to have agreed to website communication if he/she has not responded to the company's request for consent stating clearly the effect of a failure to respond within 28 days. Where a member or debenture holder has not agreed to accept website communication, the company should not make the request again within a period of 12 months from the prior request;
- (c) The company must notify the recipient of the posting of the document or information 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;
- (d) The information posted must be in a form which enables the recipient to read and retain a copy;
- (e) A document is deemed to have been received by the intended recipient 48 hours after its first posting or 48 hours after receipt of the notice of posting (whichever is the later) or any 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 ;
- (f) The information must be kept posted on the website for the whole of any specified period or 28 days if no period is specified;

- (g) The recipient may revoke his/her agreement to website communication 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; and
- (h) A member or debenture holder may request information to be provided in hard copy form free of charge within 28 days from the date of receipt of the copy on the website and the company must send a hard copy of the document within 21 days of receiving the request. If the document 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.

3. The new Part does not apply to service of a document that is issued for any legal proceedings. The mode of service of a legal document on a company is governed by section 356 of the CO which provides that a document (which includes summons, notice, order and other process) may be served on a company by sending it by post to the company's registered office or by leaving it at that office of the company.

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Companies Registry