

立法會
Legislative Council

LC Paper No. LS105/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 8 June 2001**

**Legal Service Division Report on
Companies (Amendment) Bill 2001**

Object of the Bill

To amend the Companies Ordinance (Cap. 32) to enable a listed company incorporated in Hong Kong (listed Hong Kong company) to send a copy of a summary financial report in place of a copy of the financial documents required to be laid before the company in its general meeting to a shareholder, debenture holder or any other person entitled to be sent such financial documents.

LegCo Brief Reference

2. C14/19(2001)Pt. 4 issued by the Financial Services Bureau.

Date of First Reading

3. 6 June 2001.

Comments

4. Under the Bill, a listed Hong Kong company may, with the agreement of the person entitled to be sent a copy of the relevant financial documents (entitled person), send to such person for the purpose of its annual general meeting, a copy of a summary report in place of the full financial documents required to be laid before an annual general meeting (clause 6 - proposed section 141CA(1)). The Administration intends to provide by subsidiary legislation that such agreement by the entitled person shall be deemed given unless he has indicated a contrary intention in response to a notice sent by the listed Hong Kong company within 30 days of the service of such notice on him. The intended subsidiary legislation appears to have reversed the effect of the proposed section 141CA(1).

5. The summary financial report is not to be sent by a listed Hong Kong company to an entitled person before the expiration of such period as may be specified by subsidiary legislation under the proposed section 359(2) with reference to the notice of the relevant general meeting was first sent to an entitled person (proposed section 141CB).
6. An entitled person who has agreed to receive only a copy of the summary financial report may in writing request for a copy of the relevant financial documents before the financial documents for the subsequent general meeting are sent (proposed section 141CC). The Administration intends to provide by subsidiary legislation for the continued effect of the intention notified to the listed Hong Kong company in accordance with the proposed section 141CA(1) and any subsequent change of intention.
7. The proposed new arrangement should not be implemented if the memorandum or articles of association of the listed Hong Kong company does not so permit or, in relation to a debenture holder, the terms of the debenture do not permit the company so to do. (proposed section 141CD)
8. The contents of a summary financial report must be derived from the relevant financial documents required to be laid before the listed Hong Kong company in its relevant annual general meeting and approved by its board of directors. The form of, and information and particulars to be included, in such summary report are to be specified in subsidiary legislation to be made. (proposed section 141CE)
9. The listed Hong Kong company may also by agreement with individual entitled person discharge its obligation to send to such person a copy of the relevant financial documents or of a summary financial report by publishing the documents or report on a computer network to which the entitled person would have access. (section 141CG)
10. Criminal sanctions would be imposed on the listed Hong Kong company and its officers upon contravening of any of the new provisions. (clause 8)

Public Consultation

11. According to the LegCo Brief, the Standing committee on Company Law Reform (SCCLR) was consulted on the proposal on 9 December 2000. SCCLR endorsed the implementation of the proposal subject to the preservation of the availability of full annual reports and the rights of access to such reports by the public and shareholders. The Hong Kong Society of Accountants was also consulted. It supported the proposal in principle. The technical points raised by it have been addressed in drafting the Bill.

Consultation with LegCo Panel

12. Members of the Panel on Financial Affairs were briefed of the proposal on 7 March 2001. The proposal was welcomed but a Member expressed disagreement with the proposed measure that unless the entitled person gave the company notice in writing to the contrary, he should be deemed to have agreed to receive the summary financial report.

Conclusion

13. The Bill serves a clear purpose and does not involve any complicated policy issues. Its provisions may be regarded as technical in nature. The Legal Service Division is seeking clarification from the Administration on a number of drafting points. Member may wish to defer the decision to form a Bills Committee pending a further report by this Division after receiving the response of the Administration to the points raised.

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
4 June 2001