

**Bills Committee on
Companies (Amendment) Bill 2002**

**Responses to Comments from Members
and/or Deputations on Certain Provisions**

Introduction

This paper sets out our responses to the comments made by Members and/or deputations on a number of provisions in the Companies (Amendment) Bill 2002.

Responses

2. A list of the provisions together with the comments and our responses is at the Annex.

Financial Services Branch
Financial Services and the Treasury Bureau
January 2003

**Responses to Comments from Members
and/or Deputations on Certain Provisions**

Item	Clause	Comments of Members and/or Deputations	Responses
1	2(1)	Members are concerned that the scope of the definition of “manager” ¹ is too wide and may cover a person who is not a manager.	We appreciate the concern and propose to replace “occupying a position under the immediate authority of the board of directors” in the present draft with “who, under the immediate authority of the board of directors, exercises managerial functions”.
2	26(2) ²	Mr Winston Poon, SC is concerned that the clause would exempt a reduction of the share capital for a purpose other than a redesignation of the par-value (e.g. loss of capital) from the requirement to obtain the court approval. He has proposed some amendments to address his concern and to improve the clarity of the clause.	<p>To tighten the provisions, we propose to amend the clause as follows –</p> <ul style="list-style-type: none"> * To provide that dispensation with the court’s confirmation of reduction of capital is restricted to those reductions the sole purpose of which is to redesignate the par value of a company’s shares to a lower amount; * To replace paragraph (c) of section 58(3) with “the reduction applies to and affects all shares equally”; * To replace “reduction” in paragraph (d) of section 58(3) with “any amount arising as a result of the reduction”; and * To add a new paragraph to require that the amount arising from the reduction to

¹ The term “manager” is defined to mean, in relation to a company, a person occupying a position under the immediate authority of the board of directors, subject to certain exceptions.

² This clause aims to implement the SCCLR’s recommendation that court approval of a reduction of the share capital of a company is not required if such reduction results from a redesignation of the par-value of its shares to a lower amount subject to certain conditions.

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3	33 ³	The Hong Kong Association of Banks (HKAB) and the Democratic Alliance for Betterment of Hong Kong (DAB) are concerned that under this clause, a property may be released from a charge without the agreement of the mortgagee or person entitled to the charge if the specified form can be signed by the director or officer of the company etc.	be credited to the share premium account should not be less than an amount representing the difference between the fully paid-up capital and the excess arising from the redesignation of the par value of the company's shares to a lower amount. Our policy intent is that a specified form signed by a person other than the mortgagee or person entitled to the charge should be accompanied by a document evidencing the release of the charge. In response to the HKAB's and DAB's concern and to better reflect our policy intent, we propose to amend the clause to give R of C an explicit power to require such evidence.
4	44 ⁴	Stephenson Harwood & Lo has proposed to amend this clause to provide that the written record of a decision taken by the only	We agree with the proposal and propose to amend the clause accordingly.

³ This clause provides that R of C may, on evidence given in a specified form to his satisfaction, enter on the register of charges a memorandum of satisfaction of debt in relation to a registered charge or a memorandum of the release of property from a registered charge. Where the specified form is submitted to R of C on behalf of a company, it shall be signed by a director or officer of the company etc. In any other case, the specified form shall be signed by a mortgagee or person entitled to the charge.

⁴ This clause provides that where a company has only one member and that member takes any decision that may be taken by the company in general meeting etc, he shall file with the company a written record of that decision.

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5	58	The Assistant Legal Adviser of the LegCo Secretariat (ALA) has raised some technical comments on this clause, such as with reference to the UK Companies Act 1985.	<p>We agree with her comments and propose to amend the clause as follows –</p> <ul style="list-style-type: none"><li data-bbox="772 1032 1449 1115">* To define “conditional sales agreement”;<li data-bbox="772 1167 1449 1541">* To add a new section to the effect that for the purpose of section 157H, a body corporate is not to be treated as a shadow director of any of its subsidiary companies by reason only the directors or majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions;<li data-bbox="772 1592 1449 1675">* To replace “must” with “shall” in section 157H(2); and<li data-bbox="772 1727 1449 1886">* To replace “the other person”, “a benefit” and “must” with “that other person”, “any benefit” and “shall” respectively in section 157H(4)(b).

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6	63 ⁵	W H Lam & Company has suggested a technical amendment to define the phrase “a person is connected with a director of a company” in this clause.	We agree with the suggestion and propose to amend section 161B.
7	65 ⁶	The ALA has asked for clarification as to the difference between this clause and the relevant section in the UK Companies Act 1985, i.e. the latter provides that a body corporate is not to be treated as a shadow director of any of its subsidiary companies by reason only that the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.	We propose to add a new section to clarify the position along the lines of the UK Companies Act 1985.

⁵ This clause amends section 161B “Particulars in accounts of loans to officers, etc” to cater for the proposal relating to the prohibition regarding quasi-loans and credit transactions.

⁶ This clause requires a company that has only one member, who is also a director or a shadow director to record in a written memorandum the terms of any oral contract that the company enters into with that member.