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**Background brief on
Companies (Amendment) Bill 2002**

Purpose

This paper gives a summary of the major issues considered by the Panel on Financial Affairs (FA Panel) when being briefed on the major proposals in the Companies (Amendment) Bill 2002 at the meeting on 29 March 2001.

Major proposals in the Bill

2. The main purpose of the Bill is to implement some of the recommendations made in "The Report of the Standing Committee on Company Law Reform (SCCLR) on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance" dated February 2000. The SCCLR report contains recommendations on a wide range of legislative proposals to enhance shareholders' protection, update the requirements regarding directorships, simplify the requirements for registration of foreign companies and make structural changes to modernize the Companies Ordinance (CO) (Cap. 32). A total of 62 items of legislative amendments or further study have been identified. The recommendations will be implemented in four phases.

3. The Bills seeks to implement 17 of the SCCLR's recommendations. Their main aims are to clarify the duties of directors and enhance the rights of shareholders, including -

- (a) abolishing corporate directors which will result in individuals being held responsible for corporate acts;
- (b) making a director vicariously liable for acts and omissions of his alternates;
- (c) reducing the threshold for circulating shareholders' proposals from the present 5% to 2.1/2% of the voting rights; and

- (d) giving every shareholder a personal right to sue to enforce the terms of a company's Memorandum and Articles of Association.

4. The Administration also takes the opportunity to implement a list of improvements to the CO for various purposes such as simplifying the filing requirements, improving the charge registration procedures in the CO, making technical amendments to certain winding-up provisions, streamlining the existing requirements and facilitating electronic communication between a company and a shareholders.

Consultation

5. Public consultation on the SCCLR's report was carried out for 11 months during the period from 1997 to 1998.

Members' views

6. Members of the FA Panel generally support introducing amendments to CO to strengthen the corporate governance regime. The major issues considered by members at the meeting on 29 March 2001 are as follows:

- (a) Objectives of legislative amendments to CO

A member urged the Administration to accelerate the process in reforming CO to strengthen the local corporate governance regime so as to enhance the protection of the interests of minority shareholders. Some members stressed that the reform should also aim at reducing compliance costs for business and enhancing the competitiveness of the Hong Kong market. A member cautioned that over-regulating the market should be avoided, as this would damage Hong Kong's competitiveness.

- (b) Exclusive rights of directors of private companies

A member was concerned about the protection of minority shareholders' interests. She pointed out that under the Memorandum and Articles of Association of a private company, a director would have an absolute power to refuse registration of a new shareholder. Moreover, while a director and responsible persons of a company could access corporate information and records easily, minority shareholders often found it difficult to obtain such information.

(c) Timetable for legislative proposals on company law reform and corporate governance

A member considers that the Administration should introduce legislative proposals relating to the company law reform and corporate governance by separate bills within the same term of the Legislative Council so as to facilitate Members' scrutiny of the legislative proposals.

7. The FA Panel also noted that the SCCLR had been undertaking a comprehensive review on corporate governance in Hong Kong at the instruction of the Financial Secretary in March 2001. The SCCLR had formed three Subcommittees to examine different specific areas and would commission tertiary institutions to carry out surveys and researches on corporate governance.

8. The relevant extract of the minutes of the Panel meeting on 29 March 2001 is at the **Appendix**.

Legislative Council Secretariat
23 July 2002

**Extract from the minutes of
Financial Affairs Panel meeting on 29 March 2001**

IV Proposed legislative amendments to the Companies Ordinance as recommended by the Standing Committee on Company Law Reform and others to streamline the existing requirements or facilitate electronic transactions
(LC Paper No. CB(1) 916/00-01(02))

23. The Principal Assistant Secretary (Companies) (PAS(C)) briefed members on the information paper which set out the proposed amendments to the Companies Ordinance (CO) (Cap. 32) as recommended by the Standing Committee on Company Law Reform (SCCLR) to clarify the duties of directors and enhance the rights of shareholders. The opportunity was also taken to implement a list of improvements to CO such as streamlining the existing requirements or facilitating electronic communication between a company and its shareholders.

24. Mr Albert HO pointed out that the Consultancy Report on the Review of the Hong Kong Companies Ordinance had been published quite some time ago in 1997, but only a few of the recommendations made by SCCLR were covered in the current legislative proposal. He therefore urged the Administration to accelerate the process in reforming CO. He was particularly concerned about introducing amendments to CO to strengthen the corporate governance regime in Hong Kong, so as to enhance the protection of the interests of minority shareholders. Mr HO also enquired about details of the proposed consultancy study on corporate governance in Hong Kong to be undertaken by the Administration in 2001.

25. PAS(C) said that SCCLR's recommendations, which were released in February 2000, covered a wide range of issues and varying degree of changes to CO. On the basis of these recommendations, the Administration had identified a total of 62 items for legislative amendments or for further study. These items had been divided into four phases for implementation. The Phase I items, which were included in the current legislative proposal, involved amendments to specific sections of CO. The Administration aimed at introducing these amendments into LegCo in the current session. The items covered under Phases II and III would require further study. Consultation would commence in mid-2001. Relevant legislative amendments would be introduced into LegCo in the 2002-03 session. Phase IV would involve an overhaul of CO.

26. Regarding the review of the corporate governance regime in Hong Kong, the Registrar of Companies (R of C) advised that the work was proceeding at two levels, namely the consideration of specific issues and the commissioning of various consultancy studies. With regard to the former, SCCLR had established three subcommittees in 2000. Each subcommittee would be reviewing specific areas, namely directors, shareholders and corporate reporting. The subcommittees were finalizing their recommendations. Public consultation would commence around mid-2001. The outcome of the consultation would form the basis for drafting legislative amendments relating to the corporate governance reform, which would be introduced into LegCo in the 2002-03 session. R of C further said that the decision to undertake the overall review on corporate governance in Hong Kong had been only announced by FS in his Budget Speech in March 2001. SCCLR and the Administration had already taken prompt action to pursue this complex task.

27. As to the consultancy studies on corporate governance, R of C said that SCCLR would soon commission the local tertiary institutions to carry out two major surveys and three researches on topics relating to corporate governance. The surveys would cover research on corporate governance standards in other comparable jurisdictions, including the UK, the US, Singapore, Malaysia, Taiwan, and Australia, and the attitudes of institutional investors towards these standards. The three projects would cover specific topics, such as examining the relationship between a company with dominant shareholders and its economic performance, communications between a company and its shareholders, and the value of audit, nomination and remuneration committees in promoting corporate governance. The consultancy studies were estimated to cost about \$4 million and were expected to be completed in six months.

28. On the protection of minority shareholders' interests, Ms Audrey EU pointed out that under the Memorandum and Articles of Association of a private company, a director would have an absolute power to refuse registration of a new shareholder. Moreover, while directors and responsible persons of a company could access corporate information and records easily, minority shareholders often found it difficult to obtain such information. She asked whether there were any plans to introduce legislative amendments to address these problems.

29. In response, R of C said that access to company information by shareholders was among the topics to be covered in the consultancy study on corporate governance. On the question of exclusive rights enjoyed by the directors of a private company, Mr John BUSH, Secretary, Standing Committee on Company Law Reform, said that this was one of the fundamental rules of a private company. However, he shared Ms EU's view that SCCLR should look into the matter. R of C suggested that Ms EU could forward her views in writing to the Administration for SCCLR to consider.

30. While expressing support for the Administration to expedite reform on CO to enhance the corporate governance regime in Hong Kong, Mr Eric LI stressed that the reform should also aim at reducing compliance costs for business and enhancing the competitiveness of the Hong Kong market. Mr James TIEN concurred that, while there was a need to enhance the protection of minority shareholders' interests, the Government should avoid over-regulating the market as this would damage Hong Kong's competitiveness. Regarding the legislative proposals on company law reform and corporate governance, Mr LI suggested that the Administration should consider introducing them into LegCo by separate bills within the same term so as to facility Members' scrutiny of the legislative proposals.