

Bills Committee on Companies (Amendment) Bill 2002

**List of outstanding actions to be taken by the Administration
(as at 11 March 2003)**

| <u>Subject/Clause</u> | <u>Action to be taken by the Administration</u> | <u>Proposed timing for discussion</u> |
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| Clause 2(1) Definition of manager | To replace the wordings “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”. | 12.3.2003 |
| Clause 26(2) Special resolution for reduction of share capital | <p>To address the concern of Mr Winston POON, SC that the clause would exempt a reduction of the share capital for a purpose other than a redesignation of the par value from the requirement to obtain court approval, consideration should be given to amending the clause by –</p> <ul style="list-style-type: none"> (a) providing under section 58 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; (b) replacing paragraph (c) of section 58(3) with “the reduction applies to and affects all shares equally”; (c) replacing “reduction” in paragraph (d) of section 58(3) with “any amount arising as a result of the reduction”; and (d) adding a new paragraph to section 58 to require that the amount arising from the reduction to 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. | 12.3.2003 |

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| | To also respond to the Hong Kong Association of Banks (HKAB)'s concern on whether the sole purpose of the reduction of capital is to redesignate the par value of a company's shares to a lower amount and not repay any capital to shareholders. | 12.3.2003 |
| <p>Clause 33 New section 85 - Entries of satisfaction and release of property from charge</p> | <p>To advise the proposed content of the specified form in respect of the release of the registered charge under new section 85; the documents to be provided to evidence such a release as well as the details to be entered in the Companies Registry (CR), particularly if the registered charge was only partially released; and the extent of information which the public might obtain upon a search of CR. A draft specified form should be provided for members' reference.</p> <p>To amend the clause to give the Registrar of Companies (R of C) the right to require that a specified form signed by a person other than a mortgagee or person entitled to the charge should be accompanied by a document evidencing the release of the charge as proposed by HKAB and Democratic Alliance for Betterment of Hong Kong.</p> <p>To respond to HKAB's suggestion that R of C will not register a discharge unless the Memorandum signed by the director or officer of the company is accompanied by a document evidencing the release of the charge.</p> | <p>12.3.2003</p> <p>20.3.2003</p> <p>20.3.2003</p> |
| <p>Clause 38 New section 95A - Statement that company has only one member</p> | To take out the requirement for a company to enter into its register of members a statement when its number of members falls to one or increase from one to two or more. | 12.3.2003 |
| <p>Clause 44 New section 116BC - Written record where company has only one member</p> | To amend the clause taking into account Stephenson Harwood & Lo's proposal that the written record of a decision made by the only member of a company shall be sufficient evidence of the decision for the purpose of any provision in the Ordinance that refers to that decision, as in the case of clause 55 which deals with written records of decisions of the sole director of a private company. | 3.4.2003 |

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| <p>Clause 53 New section 153A - Directors of private companies</p> | <p>To amend new section 153(A)(4) to make it clear that the two-month period should run from the date the probate or letter of administration in respect of the member's estate is granted by the court.</p> <p>To seriously re-consider members' suggestion of making it a statutory mandatory requirement for the sole member and director of a one-person company to appoint a person to act in the place of director upon his death.</p> | <p>12.3.2003</p> <p>20.3.2003</p> |
| <p>Clause 58 New section 157H - Prohibition of loans, etc., to directors and other persons</p> <p>New section 157HA - Excepted transaction</p> | <p>To define "conditional sales agreement".</p> <p>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 that the directors or majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.</p> <p>To replace the word "must" with "shall" in section 157H(2).</p> <p>To replace "the other person", "a benefit" and "must" with "that other person", "any benefit" and "shall" respectively in section 157H(4)(b).</p> <p>To advise how the bank, which makes a loan to a director of a company with security provided by the latter in contravention of new section 157H, can exercise its property rights under the security document should the director fail to repay the loan, and whether the bank is a secured or unsecured creditor in the event of liquidation of the company.</p> <p>To consider the wordings of the definition of "credit transaction" under new section 157H(7) vis-a-vis tenancy agreements.</p> <p>To amend new section 157HA(2) such that quasi loans or credit transactions should not apply to a private company except if it is a member of a group of companies, one of which is a listed company.</p> | <p>3.4.2003</p> <p>3.4.2003</p> <p>3.4.2003</p> <p>3.4.2003</p> <p>12.3.2003</p> <p>12.3.2003</p> <p>3.4.2003</p> |

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| | To review the transaction limit of \$500,000 in new section 157HA(8). | 12.3.2003 |
| Clause 59 Section 157 - Civil consequence of transactions contravening section 157H | To advise why it is necessary for new section 157I(3)(a) to refer to a person who is not a director of a company. | 12.3.2003 |
| Clause 61 Register of directors and secretaries | To repeal the requirement under section 158(10)(a) for companies to file with R of C particulars of its shadow directors. | 12.3.2003 |
| Clause 63 New section 161B Particulars in accounts of loans to directors, etc | To define the phrase “a person is connected with a director of a company” under new section 161B(12)(a) as suggested by W H LAM and Company. | 12.3.2003 |
| Clause 65 New section 162B Contracts with sole member who is also a director | To amend the section in line with the approach in the UK Companies Act 1985 so that a body corporate would not be treated as a shadow director of any of its subsidiary companies by reason only that the directors or majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions. | 12.3.2003 |
| Clause 70 Section 178 - Definition of inability to pay debts | To consider amending new section 178(4) such that the prescribed amount can be greater than or smaller than \$10,000 to allow greater flexibility. | 12.3.2003 |
| Existing section 161C(1) | To amend the section so that shadow directors of a company are obliged to give notice in writing of matters relating to loans etc from the company. | 3.4.2003 |

| <u>Subject/Clause</u> | <u>Action to be taken by the Administration</u> | <u>Proposed timing for discussion</u> |
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| Cost implications on requisitionists | <p>To include an undertaking in the speech to be delivered by the Secretary for Financial Services and the Treasury at the resumption of Second Reading debate on the Bill that the Administration would review the cost implications on requisitionists and whether provisions such as forfeitable deposits should be introduced. If so, consideration should be given to including such provisions in the Companies (Amendment) Bill 2003 to be introduced in May 2003.</p> <p>To include in the review the rationale behind the difference between sections 113 where the company pays for all reasonable costs, including the cost of circulation, printing and translation, and 115A where the requisitionist has to pay for the costs of circulation, printing and translation etc.</p> | The Administration is prepared to give the undertaking. |
| Concerns raised by deputations | To inform individual deputations of the Administration's position as regards concerns raised in their submissions. | 15.4.2003 |

Council Business Division 1
Legislative Council Secretariat
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