

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

**Follow-up actions arising from the discussion
at the meetings on 12 March and 27 February 2003**

Introduction

This paper sets out the outcome of the follow-up actions arising from the discussion at the meetings on 12 March and 27 February 2003.

(A) 12 March 2003

(a) Drafting and interpretation of section 157I

2. The drafting of the existing section 157I appears to have had regard to the UK White Paper entitled "Changes in Company Law" issued in July 1978. We are not aware of any court decision or interpretation of this section. The Bankruptcy Ordinance does not seem to contain any provision that is equivalent to section 157I.

(b) Protection of the interest of a bona fide innocent third party

3. We are considering the matter and will revert to the Bills Committee with our comments as soon as possible.

(c) Redrafting of new section 157I

4. For the time being, we do not see a need to redraft the new section 157I with reference to section 341 of the UK Companies Act, the approach of which is different from ours. As Members are aware, the Hong Kong Association of Banks supports the section as it strikes a fair balance. The Hong Kong Mortgage Corporation Limited also supports the section. The Company and Financial Law Committee of the Law Society of Hong Kong is not aware of any serious injustice caused to mortgagees/chargees by virtue of the section. It also supports the proposal to extend the prohibition (against a company providing a guarantee or security for a loan to a director) to cover more modern forms of credit and believes it is in natural consequence that section 157I is amended to be consistent with the extension.

(d) Letter from the Real Estate Developers Association of Hong Kong regarding section 157I

5. We are considering the matter and will revert to the Bills Committee with our comments as soon as possible.

(e) Form M2 – Memorandum of Satisfaction or Release of Property from Charge

6. As agreed at the meeting on 12 March 2003, we will amend Form M2 to address Members' comments.

(B) 27 February 2003

(a) Appointment of a person to act in place of the sole director (who is also the sole member) of a company

7. We have reconsidered Members' suggestion of making it mandatory for a person to be appointed to act in place of the sole director (who is also the sole member) of a company upon the director's death. In this regard, we have had the benefit of the views of some members of the Probate Committee of the Law Society of Hong Kong, namely, these members are against a mandatory system as one-person companies might have other options. For example, a resolution appointing a manager or some other person to deal with the assets despite the death of the sole member. There would then be no urgency prior to the grant of the probate. The considerations might be different for actively trading one-person companies and passive investment holding companies. There is also concern that the person appointed to act in place of a director upon the director's death could be in a position to prejudice the interests of relevant parties in the deceased's property.

8. These are valid concerns and lend support to a voluntary arrangement rather than a mandatory one. Hence, we have concluded that what is needed is an enabling provision to the effect that notwithstanding anything to the contrary in its articles, the company may, before the death of the sole member and director, appoint a person to act in place of the director upon the director's death if the sole member and director continues to remain as such of the company at the time of his death.