

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

**Follow-up Actions arising from the Discussion
at the Meeting on 20 May 2003**

Introduction

This paper sets out the outcome of the follow-up actions arising from the discussion at the meeting on 20 May 2003.

Registration of grant of administration of a deceased sole member and director of a one-member company

2. Section 72 of the Companies Ordinance provides that a company shall accept any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate of a deceased person having been granted to some person as sufficient evidence of the grant. Section 69 further provides that if the company refuses the request of a person to register himself as a member in respect of shares which have been transmitted to him by means of the grant, that person shall be entitled to call on the company to furnish a statement of the reasons for the refusal. If the company fails to do so within 28 days after making the request, the company shall, on the expiry of the period, register the person as its member forthwith. Where the company refuses registration, the person may apply to the court to have himself registered by the company and the court may, if it is satisfied that the application is well founded, disallow the refusal and order that the person be registered forthwith by the company.

3. The default arrangement is that the relevant powers in respect of registration of transmission of shares are vested in a company's directors by virtue of regulations 29 – 33 of Table A. For example, a company's directors may require production of evidence in respect of or decline to register the transmission. In the exercise of such powers, the

directors are, however, obliged to act bona fide for the benefit of their company.

4. As regards the request for a simple mechanism for registration of the grant of administration of a deceased sole member and director of a one-member company in the absence of a reserve director, we have considered the idea of vesting the powers in respect of registration of transmission of shares in a person other than directors as part of the default arrangement in Table A, and concluded that this is not advisable for the following reasons -

- (a) the exercise of these powers is an important act of a company, particularly in the case of a one-member company where the member so registered can in effect make any decision in relation to the company; and
- (b) such powers have already been vested in the directors, unless the company decides otherwise. In the absence of such decision on the part of the company, we do not consider it appropriate to vest such powers in a person other than directors, who is not entitled to play any part in the management of the company's affairs.

5. We have also considered whether the Companies Registry should be given the powers as suggested by a Member of the Bills Committee, and concluded that this is not appropriate as the Companies Registry should not be involved in the internal management matters of a company.

6. There are various alternatives to address the issue in question. The proposed mechanism for the nomination of reserve directors provides that a one-member company where the sole member is its sole director may nominate a person as a reserve director who, after the death of the sole member and director, shall be deemed to be a director. Such director would be able to exercise the power in respect of registration of transmission of shares as well as other management powers of the company.

7. In the event that the company has chosen not to nominate a person as a reserve director, existing section 114B will be relevant. This section gives the legal personal representative a right to apply to the court for an order to call a meeting where a person can be appointed to be the company's director who can then deal with the registration of the transmission of shares, and more importantly, other management matters of the company.

Financial Services Branch
Financial Services and the Treasury Bureau
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