

**Consumer Council
Submission to LegCo Bills Committee
Companies (Amendment) Bill 2002**

1. The Consumer Council appreciates the invitation by the Committee to provide its views regarding the above Bill.
2. The Council's specific interest in the Companies Ordinance stems from the fact that it often has need to deal with companies when attempting to find a resolution to problems confronting consumers. In this regard, the Council has a concern that an amendment that was being proposed to abolish private company corporate directors (i.e. remove the exemption for private companies from the prohibition against corporate directors, under section 154A of the *Companies Ordinance*) is not included in the current Bill.
3. The Council's view on this proposed amendment was sought by the Standing Committee on Company Law Reform, earlier this year. At the time, the Committee indicated that there had been previous recommendations to remove the exemption in Hong Kong and that in any event there was a world wide trend towards removing such exemption, as a means of improving corporate governance. The Committee also noted, on the other hand, that some parties had queried whether the abolition of corporate directors would diminish Hong Kong's attractiveness as a place for doing business and forming companies.
4. In its submission to the Committee the Council supported the proposed amendment. The Council's reasons for doing so are that an ongoing concern for the Council in its attempts to secure redress for consumers, and to mediate disputes is the ability to identify actual persons responsible for the actions of companies. Abolition of corporate directors for private companies would assist in this regard.
5. For example, one issue of ongoing concern to the Council is that of consumer prepayments, such as vouchers and coupons that are purchased in order to secure goods or services at a future time, usually at prices discounted from what would normally apply. In recent years, there have been cases of failures by companies that have taken prepayments from consumers, such as cake shops and fitness centres.
6. The reasons for such failures can be many and varied. Likewise, the need to identify responsible persons depends on the particular aspects of the case. However, in many cases, the ability to identify individual persons responsible for the actions of the companies involved would be likely to assist in settling some issues and in achieving redress for consumers, either as creditors, or as aggrieved persons.
7. The concern that such a move would diminish Hong Kong's attractiveness seems grossly overstated. In this regard it is pertinent to note:
 - (a) the world wide trend towards the abolition of corporate directors, as noted by the Standing Committee on Company Law Reform; and

- (b) the recent financial scandals in other jurisdictions that have undermined the public's perception of the integrity of corporate governance, that have resulted in governments increasing their efforts at addressing regulatory defects.
8. Both of the above suggest that there is an increasing demand in advanced economies, similar to that of Hong Kong, towards increased levels of accountability and a high standard of rules on corporate governance. Similar moves would increase Hong Kong's attractiveness as a centre for doing business, rather than diminishing it.
 9. The Council wishes to express its concern to Members that the proposed amendment has not been included in the Bill, particularly because the reason for its failure to appear may have been in response to misguided and spurious arguments by vested interests, that
 - (a) might not only have detrimental effects in the future insofar as consumer protection is concerned;
 - (b) but might also diminish Hong Kong's otherwise commendable efforts at achieving high standards of corporate governance.
 10. If it is impossible to include the amendment abolishing corporate directors in the current amendment Bill, the Council urges that future amendments should redress this anomaly.

Consumer Council
October 2002