



香港工業總會
Federation of
Hong Kong Industries

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Mr Matthew Loo
Clerk to the Bills Committee on the
Companies (Amendment) Bill 2002
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Loo,

Companies (Amendment) Bill 2002

Thank you for your letter of 7 August 2002, inviting us to comment on the Companies (Amendment) Bill 2002.

Before offering our specific views on the Bill, we would like to raise a general concern of our members over the proliferation of new regulations on business. In our view, many of these recently introduced regulations have inhibited the freedom of companies in their daily operation. Their compliance is also very administratively costly and cumbersome for investors to start and run a business in Hong Kong.

We wish to emphasise that Hong Kong's companies are predominately SMEs. For them, the costs incurred from compliance with new legislation has become increasingly a significant burden. We are deeply worried that if we are to allow the present situation to continue, the competitiveness of Hong Kong companies in the world market would be severely eroded. Worse still, an overly regulated business environment would defeat the entrepreneurial spirit of our people and deter overseas investors from setting up companies in Hong Kong.

As Hong Kong's economy remains in the doldrums and the unemployment rate stands at an unprecedented high level, our priority should be to find ways to improve the business environment and attract new investment in Hong Kong. Instead of introducing more regulations on companies, what the Government should now do is to streamline Hong Kong's legislation and remove all those out-dated and cumbersome procedures and requirements.

As far as the Companies Ordinance is concerned, we believe it is already very complicated in terms of compliance for most SMEs. As the share structure of private and public companies is distinctly different, we find it undesirable for the same corporate governance standards to be applied to these two categories of companies. We are of the view that the Companies Ordinance should only cover very basic requirements that companies should fulfil as a business entity, whereas more stringent regulations on listed companies may be stipulated separately in the listing rules of the Hong Kong Stock Exchange and the Securities and Futures Ordinance.

In respect of the present Bill, we understand that many of the proposed amendments only involve technical changes to the Ordinance which would not alter the fundamental rights and interests of a company's shareholders and directors. Nonetheless, we have some reservations about amending section 23 of the Ordinance to clearly spell out the rights of shareholders to enforce the terms of the memorandum and articles of association of a company.

As a matter of principle and generally in practice, shareholders in private companies should and do spell out their respective rights in joint venture agreements. This particularly applies to minority shareholders who should always spell out the rights which they wish to have against the majority and vice versa. If they fail to do so, it is inappropriate to try to cover the situation by blanket rules and regulations which may distort the neutrally applied terms between the shareholders.

At present, section 157H of the Ordinance prohibits, with limited exceptions, a company from making loans to or providing security for loans to directors. The Bill now proposes that the definition of "loan" should be extended to embrace in generic terms the provision of financial assistance to directors. While we are not against this change in principle, the requirement that private companies should first obtain the approval of shareholders before they can make loans to their directors is likely to impair the efficient functioning of companies, especially those family-owned SMEs where the shareholders and directors are the same people. We therefore recommend that private companies with shareholders' funds below a threshold be exempted from this requirement.

Finally, we would like to express our support for the proposed amendments to allow companies to indemnify officers and auditors and to allow companies to insure directors and officers.

Yours sincerely,



V. C. Davies
Director-General