

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

**Companies Limited by Guarantee  
with a Share Capital in Hong Kong**

**Introduction**

This paper informs Members of the number of companies limited by guarantee with a share capital in Hong Kong and the effect of the new section 4(4)<sup>1</sup> on these companies.

**Number of Companies**

2. As advised by the Registrar of Companies, there are at present a total of eight private companies and five public companies limited by guarantee with a share capital registered with the Companies Registry under the Companies Ordinance.

**Effect of New Section 4(4) on the Companies**

3. The new section 4(4) provides that no company limited by guarantee with a share capital can be incorporated under the Ordinance when this section comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury. As the existing 13 companies limited by guarantee with a share capital have already been incorporated and registered under the Ordinance and have been issued with a Certificate of Incorporation under section 18 of the Ordinance, which is conclusive evidence that all the requirements of the Ordinance in respect of registration have been compiled with and the company concerned is one authorized to be registered and duly registered under the Ordinance, the new section 4(4) should have no effect on these companies.

Financial Services Branch  
Financial Services and the Treasury Bureau  
October 2002

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<sup>1</sup> Clause 4(2) of the Companies (Amendment) Bill 2002 adds new section 4(4) which prohibits the incorporation of a company limited by guarantee with a share capital.

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**Table on Clauses relating to Recommendations in  
Report of the Standing Committee on Company Law Reform  
on the Recommendations of a Consultancy Report of  
the Review of the Hong Kong Companies Ordinance**

<b>No.</b>	<b>Recommendation</b>	<b>Clause</b>
1	No. 20: The Committee recommends that one-person companies be allowed.	2(3), 4(1), 11, 12, 30, 38, 41, 42, 44, 65, 69(1), 71, 90
2	No. 22: The Committee recommends that private companies should be permitted to have a minimum of one director.	2(3), 49, 53, 55, 56, 61(1)(b), 61(2), 69(2), 76, 79(6)
3	No. 40: The Committee recommends that it should not be possible to incorporate a company limited by guarantee with share capital in the future.	4(2)
4	No. 42: The Committee recommends that Regulation 82 of Table A be amended in line with the intention expressed in the UK Table A in order to remove the directorial autonomy rule.	108(d)
5	No. 48: The Committee recommends that the law provide for the removal of directors by ordinary resolution, notwithstanding any provision in the company's constitution.	57(1), 57(2)
6	No. 56: The Committee recommends that there should be a statutory provision to provide that, subject to contrary provision in the articles, a director is vicariously liable for the acts and omissions of his alternate.	54
7	No. 65: The Committee recommends that the	51, 58, 59, 60,

<b>No.</b>	<b>Recommendation</b>	<b>Clause</b>
	statutory provision be extended to cover in generic terms the provision of financial assistance to directors.	63, 64
8	No. 70: The Committee recommends that a statutory definition of shadow directors be provided.	2(1)(b), 2(2), 18, 40, 61(3), 67, 73, 84, 100, 101(6), 107
9	No. 71: The Committee recommends that a shadow director be defined to include someone who can influence less than the whole board of directors.	Ditto
10	No. 73: The Committee recommends that the definition of manager be clarified to indicate a rank immediately below and reporting to the board.	2(1)(b)
11	No. 75: The Committee recommends that the Ordinance should confirm that indemnities may be given to directors for liability incurred by them to others in the course of performing their duties and the permissible scope of such indemnities should be studied further.	66
12	No. 76: The Committee recommends that companies should be allowed to obtain insurance for directors' liabilities save for fraud, but that insurance cover could include the costs of litigation.	66
13	No. 82: The Committee recommends that the threshold for shareholders' proposals be reduced to 2½% of voting rights or 50 shareholders.	43
14	No. 86: The Committee recommends that a strict time-limit (10 business days) should be stipulated for the completion of transfers of shares of public companies.	31

<b>No.</b>	<b>Recommendation</b>	<b>Clause</b>
15	No. 92: The Committee recommends that the law should be amended to give every shareholder a personal right to sue to enforce the terms of the Memorandum and Articles of Association.	9
16	No. 102: The Committee recommends that the right to resort to the court under section 8 of the Companies Ordinance be repealed as regards public companies.	5, 10, 69(3), 69(4), 95
17	No. 117: The Committee recommends that court approval for reduction of capital should not be required for the redesignation of par-value to a lower amount provided that the company has only one class of shares; all issued shares are fully paid-up; the reduction is distributed equally to all shares; and the reduction is credited to the share premium account.	26(2), 27, 28(1), 29

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