

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 1 February 2002**

**Legal Service Division Report on
Companies (Amendment) Bill 2002**

Object of the Bill

To amend the Companies Ordinance (Cap. 32) (the Ordinance) so as to implement 17 of the recommendations made in the Report of the Standing Committee for Company Law Review (SCCLR) on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance and to provide for other miscellaneous and consequential amendments.

LegCo Brief Reference

2. C2/1/55(2001) Pt9 issued by the Financial Services Bureau and dated 17 January 2002.

Date of First Reading

3. 30 January 2002.

Comments

4. The Bill comprises amendments covering a broad range of topics from the incorporation to winding-up of companies. A number of new measures are introduced. They include allowing the incorporation of "one man companies" (clause 4), permitting private companies to have only one director (clause 53), abolishing the rights of shareholders of listed companies to apply to the courts to annul special resolutions altering the objects of the company (clause 5), making a director vicariously liable for his alternate (clause 54), defining the meaning of "shadow director" (clause 2), and permitting the removal of directors by ordinary resolution (clause 57). Also significant is the permission for companies to indemnify directors or auditors in defending any proceedings, whether civil or criminal, in which the court has found in their favour and to obtain insurance for them to cover their liabilities to the company or defending certain proceedings relating to such liabilities (clause 66).

6. Amendments are also proposed for simplifying paperwork relating to the incorporation of companies (clause 6), change of company name (clause 7), alteration of share capital (clauses 25, 26(2), 27, 28(1) and 29) and other filing requirements and for facilitating the delivery, processing and storage of information in electronic form (clauses 102, 103 and 105). The Bill further proposes to replace the existing provisions requiring filing of statutory declarations with requirements of filing signed statements. The provisions relating to the registration of charges are amended to cater for current prevailing practices (clauses 32, 33 and 34). The amount of minimum debt for which a petition for winding-up may be presented is proposed to be increased from \$5,000 to \$10,000 to bring it in line with the current bankruptcy law (clause 70).

7. Although the proposed amendments are meant to improve the Ordinance, individual proposals may cause concern to some and need to be looked at in more detail, for example:-

(a) If the objects of a listed company are de facto allowed to be altered at the will of the majority, the investments of small shareholders, who are usually the minority, may become less secure and their rights to enforce the memorandum of association of the company may be rendered ineffective.

(b) The substitution of statutory declarations by signed statements may reduce the potential criminal liabilities of the persons concerned and hence may encourage some to be less than frank.

(c) Allowing the removal of directors by ordinary resolution would advance the interests of shareholders. However, this may at the same time affect the readiness of directors to make hard decisions which are unpalatable to investors.

The proposed amendments would have considerable impact on the legal environment for carrying on business in Hong Kong.

Public Consultation

8. According to the LegCo Brief, consultation on the consultancy report has been carried out during the period from 1997 to 1998 for 11 months.

Consultation with the LegCo Panel

9. The Panel on Financial Affairs was briefed of the legislative proposal at its meeting on 29 March 2001.

Conclusion

10. The Legal Service Division is still scrutinizing the legal and drafting

aspects of the Bill. In view of the significance of the proposed legislation and the broad range of interests affected, Members may wish to form a bills committee to study the Bill in detail.

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