

LEGISLATIVE COUNCIL BRIEF

Companies (Amendment) Ordinance 2003

COMPANIES (AMENDMENT) ORDINANCE 2003 (28 OF 2003) (COMMENCEMENT) NOTICE 2003

INTRODUCTION

This brief aims to inform Members that the Secretary for Financial Services and the Treasury has issued the Companies (Amendment) Ordinance 2003 (28 of 2003) (Commencement) Notice (Annex) in the exercise of his power under section 1 of the Companies (Amendment) Ordinance 2003 (“the Ordinance”). The Notice appoints 13 February 2004 as the day on which the Ordinance, save for section 67 thereof in relation to the index of directors, shall come into operation. The Notice is subject to the negative vetting of the Legislative Council.

BACKGROUND

2. The Ordinance was passed by LegCo in July 2003. It aims to implement certain Phase I recommendations of the Standing Committee on Company Law Reform on the review of the Companies Ordinance, which seek to enhance the protection of shareholders’ rights, update the requirements regarding directorship, etc. It also introduces some changes to the Companies Ordinance to simplify the filing requirements and to facilitate electronic processing at the Companies Registry (CR).

3. One of the proposals in the Ordinance is to allow the formation of one-member/director companies. During the scrutiny of this proposal, Members of the Bills Committee were concerned that there was no separate mechanism to deal with issues arising from the death of such a company’s sole member and director pending the grant of probate or letters of administration to the deceased estate. In response to the Members’ concerns, we agreed to add an enabling provision to provide that such a company may, in general meeting, before the death of the sole member and director, nominate a person (i.e. a reserve director) to act in place of that director upon his death.

4. The existing section 158C of the Companies Ordinance provides that the Registrar of Companies (R of C) shall keep an index of every person who is a director of a company and make it available for public inspection. In practice, a searcher can obtain the following information from the index -

- (a) the list of directors of a company;
- (b) particulars of a director in a company; and
- (c) all the directorship in companies held by a single person.

5. Consequential to the introduction of the “reserve director” mechanism, a new section (i.e. section 67) has also been added to the Ordinance to amend existing section 158C so as to expand the scope of the index to cover reserve directors.

ISSUES ARISING FROM THE INDEX OF DIRECTORS

6. The CR is now developing an Integrated Companies Registry Information System (ICRIS). Upon completion of Phase I of ICRIS in early 2004, the department’s customers can conduct searches over the Internet on company data including the index of directors. To cater for the expansion of the index to cover reserve directors, significant modifications are required to be made to the system design of ICRIS. Given that most ICRIS programs are already close to completion, any major modifications at such an advanced stage will have a serious impact on the implementation schedule of Phase I of ICRIS.

7. The CR has also looked into the possibility of keeping the data relating to reserve directors in the index in manual form on a temporary basis and those of directors in electronic form. Given that these two sets of data are intertwined with each other, for example, the nomination of the reserve director of a company will be invalidated if the person who nominates the reserve director is no longer the sole member/director of the company, R of C has concluded that this option is not technically viable.

8. Against the above background, it is proposed that the commencement date of section 67 of the Ordinance should be deferred until the necessary modification work has been completed and that the other provisions of the Ordinance should be brought into operation on 13 February 2004. The R of C estimates that the modification work can be completed within six months after the live-run of Phase I of ICRIS. During this period, any member of the public can find out information

about the reserve director of a company, if any, by conducting a search on the documents filed by the company with the CR.

CONSULTATION

9. The CR has consulted its Customer Liaison Group (CLG) (which comprises representatives from the Hong Kong Association of Banks, the Hong Kong Institute of Company Secretaries, the Hong Kong Society of Accountants, the Law Society of Hong Kong, and some principal customers) on the proposal to defer the commencement of section 67 of the Ordinance. The majority¹ of the CLG members support the proposal.

ENQUIRIES

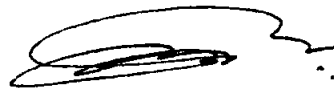
10. Enquiries on this brief should be addressed to Ms Shirley Lam, Principal Assistant Secretary for Financial Services and the Treasury (telephone number : 2527 3909).

**Financial Services Branch
Financial Services and the Treasury Bureau
December 2003**

¹ There have been suggestions from some CLG members that the commencement date of all the provisions relating to reserve directors or one-member/director companies should be deferred until all the necessary system modification work is completed. Given that all the necessary preparatory work has been completed, there is no need to defer the commencement date of the provisions other than section 67.

**COMPANIES (AMENDMENT) ORDINANCE 2003 (28 OF 2003)
(COMMENCEMENT) NOTICE 2003**

Under section 1(2) of the Companies (Amendment) Ordinance 2003, I appoint 13 February 2004 as the day on which the Ordinance, except section 67, shall come into operation.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the official title.

Secretary for Financial Services
and the Treasury

9 December 2003