

立法會
Legislative Council

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Panel on Financial Affairs

Meeting on 2 February 2009

Updated Background Brief on the Companies Ordinance rewrite exercise

Purpose

This paper recapitulates the background and key features of the rewrite exercise of the Companies Ordinance (Cap. 32) (the Ordinance). It also summarizes Members' major views and concerns on the subject.

Background

2. The Ordinance is one of the largest and most complex pieces of legislation in Hong Kong with over 600 sections and subsections and 20 schedules. The last major review of the Ordinance took place in 1984. Since then, there have been amendments from time to time to keep the Ordinance attuned to business needs. The Standing Committee on Company Law Reform (SCCLR)¹ was formed in January 1984 to advise the Financial Secretary on necessary amendments to the Ordinance as and when experience shows such amendments were required.

3. In February 2000, SCCLR published "The 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" (the SCCLR Report). Although many recommendations of the SCCLR's Report and the review have been implemented through a series of amendment bills over the past few years, it has been found that piecemeal amendments to the Ordinance are no longer desirable. The Administration considers that a complete rewrite and restructuring of the Ordinance is necessary to enhance Hong Kong's competitiveness and attractiveness as a major international business and financial centre and to

¹ Members of SCCLR include representatives of Securities and Futures Commission, the Hong Kong Exchanges and Clearing Limited and relevant government departments, as well as personalities from the relevant sectors or professions such as accountancy, legal and company secretarial.

modernize Hong Kong's company law in light of the experiences of comparable common law jurisdictions.

The Ordinance rewrite exercise

Two-phase approach

4. Given the extent and the complexity involved, the rewrite exercise is taken forward in two phases. Phase I of the Ordinance rewrite exercise focuses on the core company provisions affecting the daily operation of some 700 000 live companies, while Phase II will deal with all winding-up related provisions in the Ordinance. A White Bill covering all Phase I provisions will be issued for public consultation in mid-2009. The Administration's tentative plan is to introduce the new Companies Bill (CB) arising from Phase I of the rewrite exercise into the Legislative Council (LegCo) in the third quarter of 2010. Tentatively, the new Companies Bill will cover 22 parts (**Appendix I**).

Financial resources for the rewrite exercise

5. To provide the necessary staffing support to take forward the rewrite exercise, approval was given by the Finance Committee on 13 January 2006 for the creation of 13 posts (three directorate and ten non-directorate posts) in the Financial Services and the Treasury Bureau (FSTB), Companies Registry (CR) and Department of Justice (DoJ) for limited periods of 24 to 60 months. A dedicated Companies Bill Team (CBT) headed by a Deputy Secretary for Financial Services and the Treasury (Financial Services) was set up in mid-2006 to take forward the rewrite exercise. An external legal consultant was also commissioned to study and formulate proposals on certain complex areas of the Ordinance.

6. The total estimated cost of the rewrite exercise, including the estimated expenditure for the engagement of the external consultant, will be within \$91 million, of which \$69.406 million have been earmarked for creating new posts in FSTB, CR, and DoJ dedicated for the rewrite exercise. The cost will be funded by the Companies Registry Trading Fund. The consultancy fee is expected to be around \$15 million.

Consultation

7. Besides the SCCLR, which is the principal body to advise the Administration on all major proposals arising from the rewrite, the Administration has appointed four dedicated Advisory Groups (AGs)², comprising mainly representatives from relevant professional bodies, major chambers of commerce

² The four AGs will cover the following areas: (i) share capital, distribution of profits and assets and charges provisions; (ii) company formation, registration, re-registration, and company meeting and administration provisions; (iii) directors and officers related provisions; and (iv) inspections, investigations and offences and punishment provisions.

and company law academics to advise on specific areas of the Ordinance. A Steering Committee, chaired by the Permanent Secretary for Financial Services and the Treasury (Financial Services) and comprising senior representatives of relevant departments such as CR and DoJ, has been established to oversee and steer the entire rewrite exercise. It is tasked to consider all major proposals on the rewrite of the Ordinance discussed at the SCCLR and/or the AGs.

8. Topical public consultations have been conducted to gauge views on certain complex subjects which were not covered in the previous reviews of the Ordinance. The following topical consultations have been conducted so far³:

- (a) Consultation on proposals to improve the accounting and auditing provisions in the Ordinance conducted from March to June 2007.
- (b) Consultation on measures to improve provisions on company names, directors' duties, corporate directorship and registration of charges conducted from April to June 2008.
- (c) Consultation on proposals covering share capital, the capital maintenance regime and statutory amalgamation procedures conducted from June to September 2008.

Major views and concerns expressed by Members

9. The Administration discussed with the Panel on Financial Affairs (FA Panel) its proposal to rewrite the Ordinance at the meetings on 5 July 2004, 4 July 2005, 7 November 2005, 16 October 2006 and 7 May 2007. While welcoming the rewrite exercise, Members have raised the following views and suggestions for the Administration's consideration:

- (a) To enhance the cost-effectiveness of the rewrite exercise, the Administration should consider making reference to the outcome of the company law reforms or reviews conducted in other common law jurisdictions (such as the review of the United Kingdom Companies Act 2006) so as to leverage on their experience.
- (b) To ensure the quality of the rewrite exercise, the Administration should recruit staff of the right calibre to join the CBT, engage consultants with the appropriate experience and expertise to undertake related research. The Administration should also put in place an appropriate administrative structure delineating the roles and duties of the various parties involved in the rewrite exercise, such as the CBT, the SCCLR, the four AGs and the Steering Committee in order to avoid possible overlap of their work.

³ The consultation conclusions of the topical consultations in paragraph 8(a) and (b) are available at http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/consult-conclusion.htm

- (c) The rewrite exercise should aim at keeping the Ordinance up-to-date to meet present day circumstances and improve the business environment of Hong Kong, for example, by facilitating the use of electronic communications and simplifying procedures for the conduct of company business.
- (d) In view of the complex legal and technical issues involved in the rewrite exercise, there was concern that if the Bill was introduced into LegCo in the third quarter of 2010, there might not be sufficient time for Members to complete scrutiny of the Bill before the expiry of the LegCo term in July 2012. The Administration was therefore urged to expedite the rewrite exercise.
- (e) Members stressed the need to step up consultation with the accounting profession and related business organizations to ensure that the rewrite exercise would have the broad support of the industry and relevant stakeholders.

Latest position

10. The Administration aims at consulting the public on the draft provisions of the Bill in the fourth quarter of 2009 before it is introduced into the LegCo in the second half of 2010. The Administration will update the Panel on the progress of the Ordinance rewrite exercise at the meeting on 2 February 2009.

References

- 11. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
23 January 2009

Proposed Parts of the Companies Bill

| | | |
|-------------|---|--|
| Part I | — | Preliminary |
| Part II | — | The Registrar of Companies |
| Part III | — | Company Formation |
| Part IV | — | Re-registration of Companies |
| Part V | — | Allotment of Shares and Debentures |
| Part VI | — | Share Capital and Debentures |
| Part VII | — | Distribution of Profits and Assets |
| Part VIII | — | Registration of Charges |
| Part IX | — | Accounts and Audit |
| Part X | — | Directors and Other Officers |
| Part XI | — | Fair Dealing by Directors |
| Part XII | — | Company Administration and Procedure |
| Part XIII | — | Arrangements, Reconstructions and Takeovers |
| Part XIV | — | Shareholder Remedies |
| Part XV | — | Matters arising subsequent to Wind-Up, Striking Out and Deregistration |
| Part XVI | — | Companies Incorporated Outside Hong Kong |
| Part XVII | — | Companies authorized to register under this Ordinance |
| *Part XVIII | — | Electronic Communications |
| Part XIX | — | Inspections and Investigations |
| Part XX | — | Offences |
| Part XXI | — | Miscellaneous |
| Part XXII | — | Savings |

* As the issue of electronic communications affects other parts of the Bill, in particular Parts II, III and XII, it may not be appropriate to deal with it in a separate part. However, it has been so classified for the time being in order to underline the need to give it due consideration.

(Source : Extract from the Administration's paper on "Progress update on the Companies Ordinance rewrite exercise" – LC Paper No. CB(1)1228/06-07(05))

Appendix II

List of relevant papers

| Committee | Paper | LC Paper No. |
|---|---|---------------------|
| Meeting of Panel on Financial Affairs (FA Panel) on 5 July 2004 | ✧ Administration's paper on "Overall Review of the Companies Ordinance " http://www.legco.gov.hk/yr03-04/english/papers/fa/papers/fa0705cb1-2254-5e.pdf | CB(1)2254/03-04(05) |
| | ✧ Minutes of the FA Panel meeting on 5 July 2004 http://www.legco.gov.hk/yr03-04/english/papers/fa/minutes/fa040705.pdf | CB(1)2513/03-04 |
| Meeting of FA Panel on 4 July 2005 | ✧ Administration's paper on "Rewrite of the Companies Ordinance" http://www.legco.gov.hk/yr04-05/english/papers/fa/papers/fa0704cb1-1919-11e.pdf | CB(1)1919/04-05(11) |
| | ✧ Background Brief on rewrite of the Companies Ordinance http://www.legco.gov.hk/yr04-05/english/papers/fa/papers/fa0704cb1-1919-12e.pdf | CB(1)1919/04-05(12) |
| | ✧ Minutes of the FA Panel meeting on 4 July 2005 http://www.legco.gov.hk/yr04-05/english/papers/fa/minutes/fa050704.pdf | CB(1)2357/04-05 |
| Meeting of FA Panel on 7 November 2005 | ✧ Administration's paper on "Rewrite of the Companies Ordinance" http://www.legco.gov.hk/yr05-06/english/papers/fa/papers/fa1107cb1-193-4e.pdf | CB(1)193/05-06(04) |
| | ✧ Background Brief on rewrite of the Companies Ordinance http://www.legco.gov.hk/yr05-06/english/papers/fa/papers/fa1107cb1-193-5e.pdf | CB(1)193/05-06(05) |

| Committee | Paper | LC Paper No. |
|-----------|--|---|
| | <p>✧ Background Brief on the Companies Ordinance rewrite exercise</p> <p>http://www.legco.gov.hk/yr06-07/english/panels/fa/papers/fa0402cb1-1230-e.pdf</p> <p>✧ Rewrite of the Companies Ordinance - Consultation Paper on "Accounting and Auditing Provisions" provided by the Administration</p> <p>http://www.legco.gov.hk/yr06-07/english/panels/fa/papers/fa0402cb1-1274-e.pdf</p> <p>✧ Powerpoint presentation material on "Progress update on the Companies Ordinance Rewrite Exercise "</p> <p>http://www.legco.gov.hk/yr06-07/chinese/panels/fa/papers/fa0507cb1-1547-1-ec.pdf</p> <p>✧ Minutes of the FA Panel meeting on 7 May 2007</p> <p>http://www.legco.gov.hk/yr06-07/english/panels/fa/minutes/fa070507.pdf</p> | <p>CB(1)1230/06-07</p> <p>CB(1)1274/06-07</p> <p>CB(1)1547/06-07(01)</p> <p>CB(1)2231/06-07</p> |
| - | <p>✧ Legislative Council Brief – Report of the Standing Committee on Company Law Reform for 2007/08 provided by the Administration (File Ref: C11/10 (2008) Pt. 24)</p> | -- |