

For Information  
on 7 June 2010

**Legislative Council  
Panel on Financial Affairs**

**Companies Ordinance Rewrite**

**Second Phase Consultation on the Draft Companies Bill**

**PURPOSE**

We last briefed the Panel on Financial Affairs in April 2010 on the exercise to rewrite the Companies Ordinance (“CO”) (Cap. 32). This paper briefs Members on the latest progress of the rewrite and the public consultation on the draft Companies Bill (“CB”).

**BACKGROUND**

2. As set out in the Legislative Council (“LegCo”) Paper No. CB(1)1496/09-10(04), in view of the length of the CB and the complex issues involved, the consultation on the draft CB is held in two phases. The first phase public consultation, which concluded on 16 March, covered about half of the CB, mainly dealing with corporate governance matters. The second phase consultation, commenced on 7 May, covers the other half of the CB, dealing with more technical issues such as share capital and accounting and auditing provisions.

**THE CB CONSULTATION**

***First Phase consultation***

3. The first phase of the draft CB consultation covered 10 Parts of the CB. We have received a total of 161 submissions. Among the submissions, 104 are from companies, 30 are from individuals, and another 27 are from various organisations including some major chambers of commerce, professional and business organisations such as the Law Society of Hong Kong, Hong Kong Bar Association, Hong Kong Institute of Certified Public Accountants, and the Hong Kong Association of Banks, etc. Most of the

feedback touched on the issues highlighted for consultation, including the “headcount test” for approving a scheme of compromise or arrangement and the disclosure of residential addresses of directors and identity numbers of directors and secretaries.

4. We are studying the submissions and will take into account the views of the Standing Committee on Company Law Reform before deciding whether and how the relevant provisions in the draft CB should be amended in light of the comments received. We aim to issue the consultation conclusions in the third quarter of 2010.

### ***Second Phase consultation***

5. The second phase consultation covers the remaining 10 Parts of the CB<sup>1</sup>. The key legislative changes in this second phase consultation are set out in the ensuing paragraphs –

### **Enhancing Corporate Governance**

6. To enhance transparency and corporate governance, we will –
- (a) improve disclosure of company information by requiring public companies, private and guarantee companies (other than those qualified to apply the simplified accounting and reporting requirements, see paragraph 8(g)) to furnish more analytical and forward-looking business review as part of the directors’ report (Part 9); and
  - (b) strengthen auditors’ rights to obtain information for performing their duties (Part 9).

### **Ensuring Better Regulations**

7. To ensure that the regulatory regime is effective and put in place business-friendly practices, we will –

- (a) enhance the enforcement against “shadow companies” (Part 3)<sup>2</sup>;

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<sup>1</sup> A revised Part 1 (Preliminary) (which was included in the first phase consultation) with some added and revised definitions is also included in this second phase consultation.

<sup>2</sup> This has been included in the Companies (Amendment) Bill 2010 which was introduced into the Legislative Council in February 2010.

- (b) streamline and update the regime of registration of charges (Part 8);
- (c) remove disclosure requirements in the Tenth and Eleventh Schedules of the CO that duplicate with financial reporting standards (Part 9);
- (d) give the Registrar of Companies (“Registrar”) powers to obtain documents, records and information for enhancing the enforcement of certain provisions (Part 19);
- (e) update the provisions on company investigations (Part 19); and
- (f) empower the Registrar to compound specified offences (Part 20).

### **Business Facilitation**

8. We propose the following to streamline business practices –
- (a) to expedite the company name registration process so that a company can be incorporated within one day (Part 3)<sup>3</sup>;
  - (b) to abolish the memorandum of association so that information contained in the memorandum of association of existing companies, such as object clauses (if any), capital statement and members’ liability will be deemed to be regarded as provisions of the company’s articles of association (Part 3);
  - (c) to make the keeping and the use of a common seal optional and relax the requirement for a company to have an official seal for use abroad (Part 3);
  - (d) to introduce an alternative court-free procedure for the reduction of share capital based on a solvency test (Part 5);
  - (e) to allow all companies to purchase their own shares out of capital subject to a solvency test (Part 5);

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<sup>3</sup> This has been included in the Companies (Amendment) Bill 2010 which was introduced into the Legislative Council in February 2010.

- (f) to streamline the financial assistance provisions (Part 5) (We are inviting comments on whether the financial assistance rules should be further streamlined);
- (g) to allow more private companies and small guarantee companies (including those in a group) to take advantage of simplified accounting and reporting requirements so as to save their compliance and business costs (Part 9); and
- (h) to introduce a court-free statutory amalgamation procedure for wholly-owned intra-group companies (Part 13).

## **Modernising the Law**

9. To modernise the law to meet the needs of present-day business, we will –

- (a) abolish the par value regime and adopt a mandatory system of no-par for all companies with a share capital (Part 4); and
- (b) remove the requirement for authorised capital (Part 4).

10. In addition to the above, we have highlighted the following issues for consultation –

***(a) Restrictions on giving financial assistance by a private company for the purpose of acquiring its own shares***

We have attempted to streamline the rules on a company giving financial assistance<sup>4</sup> to a party (other than the company itself) for the purpose of acquiring its own shares in a manner similar to the New Zealand Companies Act<sup>5</sup>, but this does not completely address the issue of the provisions being “a trap for the unwary”, particularly for private companies. We therefore propose to

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<sup>4</sup> The current CO imposes a broad prohibition on a Hong Kong company (and its subsidiaries) giving financial assistance for the purpose of acquiring shares in the company. Certain exceptions are set out in section 47C of the CO and special restrictions apply to listed companies (section 47D). Unlisted companies are provided with an additional exception premised upon passing a solvency test and subject to a special resolution of the shareholders (section 47E).

<sup>5</sup> Generally speaking, a company will be allowed to give financial assistance, regardless of the source of funds, subject to the satisfaction of the solvency test and compliance with the requisite procedures.

revisit the option of abolishing the financial assistance rules for private companies.

***(b) Dropping the proposal concerning directors' remuneration reports***

We propose to drop the proposal for the CB to provide for the preparation of a directors' remuneration report in addition to the annual accounts, because improvements to the disclosure of the remuneration of directors of listed companies is better pursued through amendments to the Listing Rules and/or the Securities and Futures Ordinance, and that the requirements would be too onerous for private companies.

***(c) Investigatory and enquiry powers***

We propose some minor changes to the provisions concerning the Financial Secretary's powers to investigate or enquire into a company's affairs, as well as new provisions empowering the Registrar to obtain documents, records and information in certain circumstances.

***(d) Notice of refusal to register a transfer of shares***

We would like to seek views on whether a company should be required to give reasons explaining its refusal to register a transfer of shares.

## **WAY FORWARD**

11. The second phase public consultation will end on 6 August 2010. We will refine the CB in the light of public comments received and aim to introduce the CB into LegCo by the end of 2010.

**Financial Services and the Treasury Bureau  
May 2010**