

Bills Committee on Companies Bill

Follow-up Action to the Meeting of 5 June 2012 – Costs of Legal Action in Challenging a Scheme of Arrangement

Purpose

As agreed at the meeting of 5 June 2012, this paper sets out our proposed revised Committee Stage Amendment (“CSA”) in relation to the costs of legal action for shareholders of a company to challenge a scheme of arrangement.

Members’ Concern

2. At the meeting of 5 June 2012, Members considered our proposal to add a new clause (clause 665A) to deal with the costs of legal action in which a shareholder challenges a scheme of arrangement involving a takeover offer or general offer under clause 664A(2) (see LegCo Paper No CB(1)2091/11-12(01)). Under the proposal, the Court may only make an order about costs in favour of the shareholder if it is satisfied that the shareholder was acting in good faith in, and had reasonable grounds for, opposing the application for sanctioning a scheme of arrangement. Members were supportive of the proposal.

3. As the proposal deals with the costs incurred by shareholders of the company only, Members suggested introducing an additional provision to provide further assurance to minority shareholders that they would not have to bear the legal costs of the company unless their objection to the scheme of arrangement was frivolous or vexatious. We have undertaken to make the necessary amendments and circulate the revised CSA for Members’ information.

Revised CSA

4. As explained in LegCo Paper No. CB(1)2054/11-12(01), there are established precedents that are favourable to shareholders objecting to a scheme of arrangement. Having regard to the precedents and in response to Members' suggestion, we propose to add a subclause to the proposed clause 665A to the effect that the Court may only make an order as to costs against the shareholder if the shareholder's objection to a scheme is frivolous or vexatious. The revised clause 665A is at **Annex**.

5. The Legal Adviser to the Bills Committee considers that the new clause 665A(5) has addressed Members' concern expressed during the scrutiny of clause 665A.

**Financial Services and the Treasury Bureau
Companies Registry
6 June 2012**

665A. Court may order costs

- (1) This section applies in relation to an application made for the purposes of section 664(3) for an order of the Court sanctioning an arrangement that falls within section 664A(2).
- (2) The Court may make any order that it thinks fit about the costs incurred or to be incurred by a member who dissents from the arrangement in opposing the application.
- (3) An order may require the company or any other party to the application to indemnify the member against the costs incurred or to be incurred by the member.
- (4) The Court may only make an order about costs (including the requirement as to indemnification) under this section in favour of the member if it is satisfied that the member was acting in good faith in, and had reasonable grounds for, opposing the application.
- (5) The Court may only make an order about costs under this section against the member if the member's opposition to the arrangement is frivolous or vexatious.