

Bills Committee on Companies Bill

Follow-up actions to be taken by the Administration for the meeting on 26 July 2011

Companies incorporated outside Hong Kong

1. During the deliberation on the Administration's follow-up paper on regulation of listed companies incorporated outside Hong Kong (LC Paper No. CB(1)2756/10-11(01)), members noted that a large number of companies listed on the Stock Exchange of Hong Kong were incorporated overseas. Some members expressed concern that this might reflect a decline in Hong Kong's competitiveness as a corporate domicile and an asset management hub vis-à-vis other jurisdictions, and considered that the Companies Bill ("the Bill") should strive to promote company incorporation in Hong Kong. There were also concerns about regulation under the Bill over overseas incorporated companies, in particular the duties of directors of these companies and associated enforcement problems because very often these directors are not residing in Hong Kong and the major decisions of these companies are made outside Hong Kong.
2. To address members' concerns, the Administration is requested to liaise with relevant organizations in providing information and analyses on the following issues --
 - The situations of company incorporation in comparable jurisdictions including the UK, the US, Singapore and Australia, and their respective advantages in attracting company incorporation. How these situations and advantages compare with those in Hong Kong.
 - Measures the Administration will take to promote company incorporation in Hong Kong.
 - Comparison on the regulation under the Bill over Hong Kong incorporated companies and non-Hong Kong incorporated companies, listed and non-listed, in particular, in respect of directors' performance of duties, in order to shed light on whether these companies are regulated on a level-playing field.

Clause 21 -- Registrar's functions

3. The Administration is requested to provide a list of functions that the Registrar of Companies ("the RC") will perform under the Bill.

Clause 23 -- Registrar may issue guidelines

4. Members noted that clause 23 empowers the RC to issue guidelines to provide guidance on the operation of any provision in the Bill and reference had been made to relevant provisions in the Financial Reporting Council Ordinance ("FRCO") (Cap. 588) and the United Kingdom Companies Act 2006 ("UKCA 2006") in drafting the provision. Clause 23(5) provides that contravention of the guidelines will not attract civil or criminal liability but the guidelines are admissible in evidence in legal proceedings. Clause 23(5)(b) specifically provides that *"proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter."*
5. Members expressed concerns about: (a) the purpose of clause 23(5), (b) the meaning of clause 23(5)(b), (c) possible conflict between contravention of the guidelines resulting in no liability and allowing the guidelines to be admissible as evidence in legal proceedings, and (d) the consequences of contravention of the guidelines issued by the RC. Some members further suggested that compliance with the guidelines issued by the RC shall be used as a defence for persons in legal proceedings.
6. The Administration is requested to give written responses to address the above concerns and suggestion, and provide information on the operation of the relevant provisions in FRCO and UKCA 2006 in addressing the concerns.

Clause 25 -- Fees payable to Registrar

7. Members noted that under clause 25 of the Bill, the Financial Secretary may make regulations to require payment to the RC of fees in respect to the performance of any of the RC's functions. The table of fees payable to the RC is set out in Schedule 8 to the existing Companies Ordinance (Cap. 32) ("CO"). To avoid causing confusion to the public during the transitional period, the Administration is requested to consider the suggestion to formulate transitional

provisions in the Bill for fees payable to the RC and to repeal Schedule 8.

Clause 26(9) -- Specified address

8. Under the existing CO, directors and company secretaries are required to provide residential addresses for incorporation and registration purposes, which are available for public inspection. Members noted that under the Bill, company secretaries are only required to provide correspondence addresses whereas company directors are required to provide both residential and correspondence addresses. Only the correspondence addresses of directors and company secretaries will be shown on the Companies Register.
9. As a transitional arrangement, upon commencement of the Bill, the existing information on residential addresses in the Companies Register will automatically be recorded as "correspondence address". To withhold such information from public disclosure, directors and company secretaries are required to make application and pay the necessary fee to change the information to residential addresses or provide new correspondence addresses. Members considered the requirement not user-friendly and cumbersome. The Administration is requested to consider the suggestion to automatically replace the existing residential addresses of directors and companies secretaries in the Companies Registry with the companies' registered addresses, or other ways to streamline the procedures.

Clause 30 -- Registrar may specify requirements (for section 29(1)) and Clause 31 -- Registrar may agree to delivery by electronic means (for section 29(1))

10. Clause 30 provides that the RC may specify requirements on documents delivered to him. In view of the availability of the electronic filing services of the Companies Registry, there are provisions to expand the RC's power to specify requirements as to the form, authentication and manner of delivery of documents including rectification of an error in the Companies Register. As a measure to promote submission of documents by companies through electronic means, clause 31 provides that the RC may enter into an agreement with a company to provide that all or any class of its documents be delivered by electronic means.
11. Members expressed concerns about the implementation of

authentication of electronic documents and Companies Registry's electronic filing service. Some members suggested that the Administration should lower the e-filing fees in order to promote delivery of documents through electronic means. The Administration is requested to provide an information paper on the proposed arrangements for delivery and authentication of documents by electronic means after commencement of the Bill and the progress of implementation of e-Registry service of the Companies Registry.

Council Business Division 1
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13 October 2011