

Bills Committee on Companies Bill

Administration's Response to the Submission from the Asian Transnational Corporation Monitoring Network

Purpose

This paper sets out the Administration's response to the proposals raised in the submission from the Asian Transnational Corporation Monitoring Network dated 30 March 2012 (LegCo Paper No. CB(1)1512/11-12(01)).

Administration's response

Business Review (recommendations 1 and 2 on page 4 of the submission)

2. We have consulted the public on the proposal in relation to business review both in the topical consultation in 2007 and in the second phase consultation on the draft Companies Bill ("CB") conducted in 2010. The current proposal in the CB has already taken into account the views expressed during the consultation, in particular those on the proposal to allow large private companies to opt out from the requirement under clause 380(3) and the contents of business review as currently contained in Schedule 5 of the CB. We believe that our proposal has already struck the right balance in enhancing corporate governance while not making the requirement unduly onerous to companies.

Enlightened Shareholder Value (recommendation 3 on page 4 of the submission)

3. Regarding the proposal to introduce the principle of "enlightened shareholder value" into the CB, the issue was raised in the topical consultation held in 2008 and received only limited support. We consider that it is premature to introduce the principle into the CB. However, we have proposed to clarify the standard of directors' duty of care, skill and diligence in clause 456 of the CB, which involves a dual subjective/objective test, to provide appropriate guidance to directors.

Others

4. Apart from the three recommendations on the CB, we note the views of the Asian Transnational Corporation Monitoring Network on other aspects and will pass their comments to other relevant agencies for consideration as appropriate.

Financial Services and the Treasury Bureau
5 June 2012