

**Extract from Minutes of meeting of Panel on Financial Affairs
held on 4 February 2002**

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V Proposed reform of the registration regime for overseas companies
LC Paper No. CB(1)938/01-02(03)- Information paper provided by the
Administration

41. The Chairman welcomed representatives of the Administration to the meeting and invited the Registrar of Companies (R of C) to give the Panel a briefing on the proposed reform of the registration regime for overseas companies.

42. R of C said that the main objective of the proposed reform was to introduce a simpler and more user-friendly registration regime for overseas companies, while enhancing disclosure requirements. He said that there was a need to reform the registration regime in the light of the Mainland's entry into the WTO, which would probably give rise to an increase in the number of overseas companies seeking to register to conduct business in Hong Kong in the next few years. The details of the proposals were contained in the information paper provided to members.

43. Mr NG leung-sing noted that one of the proposals was the requirement for all overseas companies to file an annual return which should contain, among other information, the particulars of persons who, at the date of the return, were directors, secretary and authorised representative of the company. He asked how exhaustive was the information required and what the relevance of the information was in the light of public interest.

44. R of C replied that the information required for the annual return included the name (English and Chinese where applicable), address, identity card number (or passport number) of senior company personnel. These details constituted the basic information that a member of the public should have the right to know if they had any dealings with a company. The Registry Solicitor (RS) supplemented that the annual return would require no additional information than was already required under Part XI of the Companies Ordinance (the Ordinance). The proposed change was the requirement for overseas companies to file an annual return containing all the required information instead of notifying the R of C of changes only when there had been such changes. In response to Mr NG's further question, RS said that apart from registering the information, there would be no need for the Companies Registry to take any further action in respect of the information, and it would be up to the public to use the information as they deemed appropriate.

45. In reply to Mr CHAN Kam-lam's enquiry about the filing of accounts by overseas private companies, R of C clarified that under the proposal, if an overseas company, which could be a private company had to file accounts in its home jurisdiction, then it had to do so in Hong Kong as well. As such, the proposal actually increased the amount of information available to the Hong Kong public on overseas private companies registering to do business in Hong Kong.

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46. Mr Henry WU asked if the proposed reform measures were in line with the requirements of the registration system for overseas companies in other jurisdictions, which were comparable to Hong Kong as international financial centres. He also enquired how the arrangement in the proposed legislation would deal with a case in which an overseas company proposed to register a name under which it had been incorporated in its home jurisdiction but which was identical to the name of a local company.

47. R of C confirmed that the proposed reform measures were in line with other comparable jurisdictions. RS supplemented that the Ordinance already enabled the R of C to serve a notice on an overseas company whose corporate name was the same as or too like the name of another company already registered under the Ordinance, and to direct the company to specify a different name under which it would carry on business in Hong Kong. The proposed measure was to allow an overseas company which had been obliged to register with different corporate name when registering under Part X in such circumstances to re-register under its original corporate name where the local company having an identical name had, for example, been wound up or had otherwise released its name to the overseas company. In such circumstances, the R of C would be able to withdraw the notice previously served on the overseas company. RS continued that an overseas company whose name had already been registered by a local company currently in operation would have to operate in Hong Kong under another name, and would not be allowed to use the name already registered by the local company.

48. Mr James TO Kun-sun observed that some overseas companies merely held properties but did not have an actual place of business in Hong Kong. If there was litigation involving such a company, the fact that the company did not have an actual place of business might hamper the legal process. He was concerned that such overseas companies might abuse the system to conduct illegal activities such as money laundering. He also noted that there was an increasing number of companies which traded and conducted transactions over the Internet, but which did not have a physical place of business. He asked how the registration regime, upon reform as proposed, would apply to these companies. In response, RS said that whether an overseas company had established a place of business in Hong Kong and hence was required to register under Part XI of the Ordinance would be considered according to the particular circumstances pertinent to the company, such as whether the company had entered into leasing or employment contracts, or had entered into contracts with other companies, the company's length of operation etc. In this regard, the Administration noted Mr TO's suggestion of establishing a system whereby basic information concerning an overseas company would be readily available if the company merely held properties in Hong Kong but had not established a place of business in Hong Kong.

49. In regard to Mr TO's question as to whether the proposed reform would undermine the Administration's anti-money laundering initiatives, R of C said that the proposed reform measures in fact strengthened the regime in thwarting money laundering activities by requiring every overseas company to file proper annual returns. As such, overseas companies would be required to deliver to the Registrar copies of their accounts which they were required to publish in their home jurisdictions. The Administration noted Mr TO's suggestion to consult other regulatory bodies such as

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the Hong Kong Monetary Authority on the proposed reform in view of the possible impact of the reform measures on anti-money laundering initiatives.

50. As regards business operations which traded only on the Internet, R of C said that practically company law could only apply to legal entities which had a physical place of business. He highlighted that the Sub-Committee of the Standing Committee on Company Law Reform, which had reviewed the provisions regarding overseas companies, had consulted various professional bodies such as the Hong Kong Association of Banks, the Hong Kong Society of Accountants etc., and had examined the position in overseas jurisdictions on the applicability of company law to business operations which traded only on the Internet. As a result, it had been concluded that this type of business operations did not fall under the purview of company law.

51. Mr SIN Chung-kai noted that there might be ambiguity in the proposed new term 'non-Hong Kong company' to replace the existing term 'oversea company', in that the new term did not accurately reflect the fact that the oversea company, which had been incorporated outside Hong Kong, would register/had registered to have a place of business in Hong Kong. R of C agreed that the term was not completely satisfactory but pointed out that the Sub-committee had not been able to identify a better alternative. He stressed that it would not be possible to designate such companies as 'foreign companies' as this would mean that Mainland companies would be categorized as 'foreign'.

52. Mr CHAN Kam-lam noted that in paragraph 6 of the information paper that currently, an oversea company was required to deliver various documents to the Registrar within one month of the establishment of its place of business in Hong Kong. In this regard he asked how the Administration had been able to ascertain if a company had complied with this requirement, as currently, oversea companies were not required to specify the date of establishment in their documents. In response, R of C said that, while he appreciated Mr CHAN's concern, it had not been practicable for the Companies Registry to monitor if the companies concerned had complied with this requirement, because such monitoring work would have extensive resource implications.

53. The Chairman thanked the Administration for attending the meeting.

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