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**Bills Committee on
Companies (Amendment) Bill 2003**

**Background Brief on
Companies (Amendment) Bill 2003**

Purpose

This paper aims to provide a summary of the views of Members expressed when the legislative proposals relating to the Companies (Amendment) Bill 2003 (the Bill) were deliberated at the meetings of the Panel on Financial Affairs on 4 February 2002 and 7 April 2003.

The Bill

2. The Bill contains four main groups of proposed legislative amendments and these amendments are set out in Schedules 1 to 4 of the Bill as follows -

Schedule 1	Amendments to the Companies Ordinance relating to prospectuses
Schedule 2	Amendments to the Companies Ordinance relating to group accounts
Schedule 3	Amendments to the Companies Ordinance relating to oversea companies
Schedule 4	Amendments to the Companies Ordinance relating to shareholders' remedies

Schedule 5 of the Bill contains the consequential and other amendments.

Schedule 1 - Amendments relating to prospectuses

3. The prospectus-related amendments are proposed mainly in response to specific requests from market participants and fall under phase II of the three-phase approach endorsed by the Financial Secretary to overhaul the existing regulatory framework for offers of shares and debentures. The objective of the measures taken through the three-phase approach is to attract more financial product issuers to Hong Kong and hence increasing liquidity of the market.

4. The principal purpose of Schedule 1 is to amend Part II (applicable to companies incorporated in Hong Kong) and Part XII (applicable to companies incorporated outside Hong Kong) of the principal Ordinance to facilitate the registration and issue of prospectuses.

Schedule 2 - Amendments to the Companies Ordinance relating to group accounts

5. The principal purpose of Schedule 2 is to modify the meaning of the term “subsidiary” in the principal Ordinance in order to make the meaning of the term more closely align with the meaning attached to the term in the International Accounting Standards. However, the new meaning will only apply for the purposes of the group accounts of a company. For other purposes, the present meaning of the term “subsidiary” in the principal Ordinance will apply.

6. According to the LegCo Brief, the proposals relating to the definition of “subsidiary” have been prepared in consultation with the Hong Kong Society of Accountants.

Schedule 3 - Amendments to the Companies Ordinance relating to overseas companies

7. The principal purpose of Schedule 3 is to amend the principal Ordinance to -
- (a) replace the existing term “oversea company” by “non-Hong Kong company”;
 - (b) simplify the registration requirements of non-Hong Kong companies;
 - (c) enhance the disclosure requirements of non-Hong Kong companies; and

- (d) introduce other miscellaneous amendments to the principal Ordinance to:
 - (i) enable electronic incorporation of a company and streamline the incorporation procedures;
 - (ii) replace the existing term “subscriber” by “founder member”;
 - (iii) state the purposes for which documents kept or maintained by the Registrar of Companies under the principal Ordinance may be made available for public inspection; and
 - (iv) remove the upper limit on the number of partners in a partnership.

Schedule 4 - Amendments to the Companies Ordinance relating to shareholders' remedies

8. The principal purpose of Schedule 4 is to enhance shareholders' remedies under the principal Ordinance in relation to statutory derivative action, unfair prejudice remedies, orders for inspection of the records of companies incorporated in Hong Kong and non-Hong Kong companies, and injunction orders.

9. The proposals relating to shareholders' remedies were contained in the Consultation Paper on Proposals made in Phase 1 of the Corporate Governance Review published by the Standing Committee on Company Law Reform (SCCLR) in July 2001. According to the LegCo Brief, the comments received during the consultation period indicated support for the proposals.

Discussions at the Panel on Financial Affairs

10. Before the formal introduction of the Bill, the Panel on Financial Affairs was consulted on the proposals relating to overseas companies at the meeting held on 4 February 2002, and on the other proposals relating to the Bill at the meeting on 7 April 2003.

Panel discussion on proposals relating to overseas companies

11. On the proposed requirement for all overseas companies to file an annual return, a Member enquired about the extent of details required and what the relevance of the information was in the light of public interest. The Administration explained that those 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 annual return would require no additional information than was already required under Part XI of the Companies Ordinance. The proposed change was the requirement for overseas companies to file an annual return containing all the required information instead of notifying the Registrar of Companies of changes only when there had been such changes.

12. A Member expressed concern that overseas companies which merely held properties but did not have an actual place of business in Hong Kong might abuse the system to conduct illegal activities such as money laundering. The Administration explained 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 Companies Ordinance would be considered according to the particular circumstances pertinent to the company. In this regard, the Administration noted the Member's suggestion of establishing a system whereby basic information concerning an overseas company would be readily available if an overseas company merely held properties in Hong Kong but had not established a place of business in Hong Kong.

13. On the concern about the possible impact of the proposals on anti-money laundering initiatives, the Administration advised that the proposals would help strengthen the regime in thwarting money laundering activities by requiring every overseas company to file proper annual returns. Moreover, 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 the Member's suggestion to consult other regulatory bodies such as the Hong Kong Monetary Authority on the possible impact of the proposals on anti-money laundering initiatives.

14. A Member enquired whether the proposed registration regime would apply to companies which traded and conducted transactions over the Internet, but which did not have a physical place of business. The Administration advised that the sub-committee of SCCLR designated to review the provisions regarding overseas companies had consulted various professional bodies 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.

15. A Member commented that there might be ambiguity in the proposed new term "non-Hong Kong company" to replace the existing term "overseas company". The Administration concurred that the term was not completely satisfactory but pointed out that the above-mentioned sub-committee of the SCCLR had not been able to identify a better alternative. It would not be appropriate to designate such companies as "foreign companies" as this would mean that Mainland companies would be categorized as "foreign".

16. A Member enquired whether the proposals were in line with the requirements of the registration system for overseas companies in other jurisdictions, which were comparable to Hong Kong as an international financial centre. The Administration confirmed that the proposals were in line with other comparable jurisdictions.

Panel discussion on other proposals under the Companies (Amendment) Bill 2003

17. At the Panel meeting on 7 April 2003, Members raised the following concerns -

- (a) checks and balances to be put in place to prevent abuse of the proposed provisions enabling shareholders' access to company records;
- (b) protection for investors against misleading or false information disclosed by companies on their business and performance in their marketing materials; and
- (c) propriety of the approach of making reference to company laws of different overseas jurisdictions as the approach might result in piecemeal adoption of overseas systems and hence possible inconsistencies in the proposed legislation.

18. The Administration's response was as follow -

- (a) As the order for inspection of records would be made by the court on the conditions that the applicant was acting in good faith and the inspection was for a proper purpose, sufficient checks and balances would be provided in the system;
- (b) Only factual and procedural rather than promotional information would be permitted in the issue of "awareness advertisements". Such advertisements would not constitute prospectuses nor prohibited advertisements under relevant securities laws; and
- (c) The Government's policy was to adopt the best practices of different overseas jurisdictions. In working out the current proposals, reference had been made to relevant legislation of overseas jurisdictions with well-developed regimes.

19. At the Panel meeting, the Panel Chairman also requested the Administration to provide comparison between the legislation of overseas jurisdictions and the proposals in the Bill to facilitate Members' scrutiny of the Bill after the Bill was introduced into the Council.

Council Business Division 1
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