

For Information
on 2 April 2007

**Legislative Council
Panel on Financial Affairs**

Progress Update on the Companies Ordinance Rewrite Exercise

PURPOSE

This paper aims to provide Members with an update on the progress of the exercise to rewrite the Companies Ordinance (“CO”) (Cap. 32).

BACKGROUND

2. As set out in the Legislative Council (“LegCo”) Paper No. EC(2005-06)9, given the extensive nature of the rewrite exercise and the numerous issues involved, the exercise to rewrite the CO is being taken forward in two phases. Phase I focuses on the core company provisions affecting the daily operation of some 600,000 live companies, while Phase II will deal with all winding-up related provisions in the CO.

3. A White Bill covering all Phase I provisions will be issued for public consultation in mid-2009, before the new Companies Bill (“CB”) is introduced into the LegCo tentatively in the third quarter of 2010.

PROGRESS OF THE REWRITE

Framework of the New Companies Bill

4. Tentatively, the new CB will contain 22 parts, having regard to the current parts of the CO that will be covered by the Phase I rewrite exercise, and to achieve a logical structure of the new legislation. These are listed at Annex.

5. Those parts of the existing CO regarding the winding-up and insolvency-related provisions will be dealt with separately in the context

of Phase II of the rewrite exercise. The proposed framework of the CB is, nevertheless, indicative in nature. There may be changes as the rewrite exercise progresses.

Companies Bill Team

6. Following the approval of the LegCo Finance Committee on 13 January 2006, a dedicated Companies Bill Team (“CBT”)¹, headed by a Deputy Secretary for Financial Services and the Treasury (Financial Services), was set up in mid-2006 to take forward the exercise. An external legal consultant² has been commissioned to study and formulate proposals on certain complex areas of the CO, including the share capital and debentures (Part II of the CO), distribution of profits and assets (Part IIA) and charges (Part III) (“the Consultancy Study”).

7. The CBT is working on various proposals on reforming the CO, leveraging on recent company law reforms in other major common law jurisdictions such as the United Kingdom, Australia, New Zealand and Singapore.

The Advisory Groups

8. To engage relevant stakeholders at an early stage, the Administration has appointed four Advisory Groups (“AGs”), in addition to the Joint Government/Hong Kong Institute of Certified Public Accountants Working Group to Review the Accounting and Auditing Provisions of the CO (“JWG”) formed in 2002, to advise on specific areas of the CO. Each of the four AGs studies the following areas:

- AG1: share capital, distribution of profits and assets and charges provisions;
- AG2: company formation, registration, re-registration, and company meeting and administration provisions;
- AG3: directors and officers related provisions; and
- AG4: inspections, investigations and offences and punishment provisions.

¹ As set out in LegCo Paper No. EC(2005-06)9, the CBT comprises 14 officers, 5 from Financial Services Branch (FSB) and 9 from CR. Of the 14 posts, 7 of them are new posts created on a time-limited basis for 24 to 60 months. The rest are filled by internal redeployment. The CBT is also supported by 7 officers in Department of Justice (DoJ).

² Dr Maisie Ooi from the National University of Singapore was appointed the Consultant for the Consultancy Study on the Rewrite of the CO. She is assisted by several experts from the United Kingdom, New Zealand and Singapore.

9. The AGs comprise members nominated by the relevant professional bodies (including HK Institute of Certified Public Accountants, Law Society of HK, HK Institute of Chartered Secretaries, HK Bar Association, HK Institute of Directors and HK Association of Banks) and business organisations (including the HK General Chamber of Commerce and the Chinese General Chamber of Commerce), company law academics, Standing Committee on Company Law Reform (“SCCLR”)³ members and representatives from relevant Government departments/agencies.

10. The four AGs have commenced work in phases since October 2006. So far, the AGs have examined proposals relating to the following aspects of the CO:

- arrangements, reconstructions and takeovers;
- par value and related issues;
- beneficial owners’ enjoyment of members’ rights;
- electronic communications between companies and shareholders;
- voting and proxy provisions;
- registration provisions;
- directors’ duties; and
- directors’ conflicts of interest.

The SCCLR

11. The SCCLR plays a key role in advising on all major proposals arising from the rewrite, including the key recommendations put forward by the AGs. It also advises the Administration on some issues which might have wider implications for the rewrite exercise, such as the types of companies to be formed and the definition of private and public companies under the new CO.

12. Recently, the SCCLR has also considered a review⁴ conducted by the CBT on the operation of the statutory derivative action (“SDA”) which commenced in July 2005. While there have been very few reported court cases whose developments are also not sufficiently

³ The SCCLR, established in 1984, advises the Financial Secretary on necessary amendments to the CO as well as amendments required to the relevant securities legislation with the objective of providing support to the Securities and Futures Commission (“SFC”) in administering the legislation. Members of the SCCLR include representatives of the SFC, the Hong Kong Exchanges and Clearing Limited and relevant government departments, as well as personalities from the relevant sectors or professions such as accountancy, legal and company secretarial.

⁴ The Administration had undertaken to conduct such a review during the resumption of the second reading of the Companies (Amendment) Bill 2003, which provided for, among other things, the statutory derivative action.

advanced, there are some positive signs that the leave requirement for commencing the SDA has not become a “trial within a trial” and the co-existence of the SDA and the common law derivative action has not led to any abuse⁵. Other than the introduction of the SDA in the UK Companies Act 2006, there have not been any significant developments in other comparable jurisdictions. On this basis, it has been concluded in the review, to which the SCCLR has not raised any objection, that the CBT will keep in view the operation of the SDA and make necessary improvements, where appropriate, in the light of the developments on the SDA, both locally and internationally, in the course of the rewrite.

Steering Committee on Companies Ordinance Rewrite

13. A Steering Committee on CO Rewrite was formed within the Administration to oversee and steer the entire rewrite exercise. It is chaired by the Permanent Secretary for Financial Services and the Treasury (Financial Services). Other members of the Committee include the Registrar of Companies, the Official Receiver, and senior officers from the DoJ and FSB. The SC will consider all major proposals on CO rewrite discussed at the SCCLR and/or the AGs.

Topical Public Consultations – Accounting and Auditing Provisions

14. In the course of the rewrite, the CBT will conduct several topical public consultations to gauge views on certain complex subjects which were not covered in the previous reviews of the CO. In this respect, we will launch the first topical public consultation on 29 March 2007 on proposals (“Proposals”) to improve the accounting and auditing provisions, which are based on the work of the JWG and have been finalised with the benefit of the SCCLR’s views. The Proposals aim, inter alia, to (a) save compliance and business costs incurred by companies (e.g. making the summary financial reports provisions more user-friendly), (b) improve the disclosure and transparency of the information in company annual reports (e.g. introducing a business review in the directors’ report), and (c) enhance compliance with the relevant accounting and auditing requirements (e.g. enhancing rights of auditors to access relevant audit information). We will study carefully the comments received during the consultation before finalizing the proposals for incorporation into the White Bill for public consultation in mid-2009.

⁵ These two issues are the major concerns raised during the scrutiny of the relevant provisions by the Legislative Council for the SDA.

15. Consultations on other subjects, such as share capital and distribution of profits and assets, and company charges, are planned to be launched in early 2008.

Financial Resources for the Rewrite

16. As set out in LegCo Paper No. EC(2005-06)9 considered by the LegCo Finance Committee on 13 January 2006, the total cost of the rewrite exercise will be within HK\$91 million, of which HK\$69.406 million have been earmarked for creating new posts in FSB, CR and DoJ. The cost of the entire rewrite exercise will be funded by CR Trading Fund. Approximately HK\$10 million, covering mainly salaries for the newly created posts and costs incurred for the Consultancy Study, have been spent by the end of February 2007. The expenditure so far is in line with our projections.

PHASE II OF THE REWRITE

17. We are formulating a workplan in consultation with the Official Receiver's Office, on the timeframe and resources required for Phase II of the rewrite exercise. Our current thinking is to start initial scoping and background research in late 2008. Depending on the outcome, we will be able to more accurately forecast the timeline.

WAY FORWARD

18. We are generally on track to produce a White Bill for public consultation in mid-2009. We will continue to keep this Panel posted on the progress of the rewrite exercise.

Proposed Parts of the Companies Bill

Part I	—	Preliminary
Part II	—	The Registrar of Companies
Part III	—	Company Formation
Part IV	—	Re-registration of Companies
Part V	—	Allotment of Shares and Debentures
Part VI	—	Share Capital and Debentures
Part VII	—	Distribution of Profits and Assets
Part VIII	—	Registration of Charges
Part IX	—	Accounts and Audit
Part X	—	Directors and Other Officers
Part XI	—	Fair Dealing by Directors
Part XII	—	Company Administration and Procedure
Part XIII	—	Arrangements, Reconstructions and Takeovers
Part XIV	—	Shareholder Remedies
Part XV	—	Matters arising subsequent to Wind-Up, Striking Out and Deregistration
Part XVI	—	Companies Incorporated Outside Hong Kong

Part XVII	—	Companies authorized to register under this Ordinance
* Part XVIII	—	Electronic Communications
Part XIX	—	Inspections and Investigations
Part XX	—	Offences
Part XXI	—	Miscellaneous
Part XXII	—	Savings

* As the issue of electronic communications affects other parts of the CB, in particular Parts II, III and XII, it may not be appropriate to deal with it in a separate part. However, it has been so classified for the time being in order to underline the need to give it due consideration.