

For information

Bills Committee on Competition Bill

Definition of “Shadow Director” Used in Hong Kong Ordinances

Purpose

This paper provides a list of the definition of “shadow director” used in Hong Kong ordinances (apart from the Companies Ordinance (Cap. 32)), as requested by Members at the meeting on 15 February 2011.

Definition of “shadow director”

2. Apart from section 2(1) of the Companies Ordinance (Cap. 32), the expression “shadow director” is also defined in three other ordinances, as listed below -

(i) *Securities and Futures Ordinance (Cap. 571)*

Section 1 of Schedule 1

“shadow director” means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

(ii) *Financial Reporting Council Ordinance (Cap. 588)*

Section 2(1)

“shadow director” means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors

act on advice given by him in a professional capacity;

(iii) Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A)

Section 42A

“shadow director”, in relation to an approved trustee that is a company, means a person described in paragraph (b) of the definition of “controller” in section 2(1) of the Ordinance ;

Section 2(1) of the relevant principal Ordinance, i.e. Mandatory Provident Fund Schemes Ordinance (Cap. 485) stipulates -

“controller”, in relation to a company, means any of the following persons-

- (a) the directors of the company;*
- (b) a person in accordance with whose instructions those directors are accustomed to act;*
- (c) the chief executive officer of the company;*
- (d) a natural person who, alone or together with an associate, a close relative or an employee of the person, or a company of which the person is a director, or through a nominee, controls at least 15 per cent of the voting shares of the company; (Amended 18 of 2008 s. 26)*
- (e) another company that, alone or with any associate, or any employee of an associate, of that other company, or through a nominee, controls at least 15 per cent of the voting shares of the first-mentioned company; (Added 4 of 1998 s. 2)*

Advice sought

3. Members are invited to note the contents of the paper.

**Commerce and Economic Development Bureau
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