Bills Committee on Companies Bill

Follow-up actions for the meetings held on 3 and 10 February 2012 in relation to Part 13 of the Companies Bill

Purpose

This paper sets out the Administration's response to the issues raised by Members at the Bills Committee meetings on 3 and 10 February 2012 relating to Part 13 (Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back) of the Companies Bill ("CB").

Administration's response

Clause 664 (Court may sanction arrangement or compromise)

2. Members raised queries and concerns on the headcount test for approving a scheme of arrangement or compromise under clause 664. We will consider the views of Members, as well as the deliberations at the meeting to receive views from interested parties on clause 664 to be held on 23 March 2012, and revert in due course.

Clauses 669 (Vertical amalgamation) and 670 (Horizontal amalgamation)

3. Members proposed that a company with floating charge should be allowed to use the amalgamation procedures under clauses 669 and 670 so long as the relevant creditors have given consent to the company. While we agree that the proposal would facilitate greater use of the non-court procedure, we note that it is possible for each of the amalgamating companies to have a floating charge over the same category of assets and the priority of such charges would be governed by the common law rules. Potentially, the proposal could give rise to priority issues as to these competing floating charges after amalgamation. The intention of clauses 669(2)(d)(i) and 670(2)(d)(i), viz. the requirement that there is no floating charge created by the amalgamating company, is to avoid such problems.

4. Subject to Members' views, if we allow companies with floating charges to amalgamate, we would need to require the consent of all the holders of the floating charges as a condition for allowing the amalgamation, so as to ensure that the holders of the floating charges can act to protect their own interests. Likewise, it would also be necessary to require the consent of all holders of charges over assets coming within any class of assets under clauses 669(2)(d)(ii) or 670(2)(d)(ii) (i.e. any security created by the amalgamating company over a class of assets, to any of which the security interest has not attached).

Clauses 683 (Notice to minority shareholders) and 684 (Offeror's right to buy out minority shareholders)

5. As suggested by Members, we would delete clauses 683(5) and 684(4)(d). The deletion means that the position under the CO will be maintained. The corresponding provisions for "sell-out", i.e. clauses 691(6) and 692(4)(d), and share repurchase, i.e. clauses 702(5), 703(4)(b), 709(6) and 710(4)(b), will be deleted as well.

Financial Services and the Treasury Bureau
Companies Registry
27 February 2012