

Bills Committee on Companies Bill

Standing Committee on Company Law Reform

Purpose

In response to Members' request raised at the meeting of the Bills Committee on Companies Bill on 14 March 2011, this paper provides Members with information on the Standing Committee on Company Law Reform ("SCCLR").

Composition of the SCCLR

2. The SCCLR was formed in January 1984 to advise the Financial Secretary primarily on necessary amendments to the Companies Ordinance ("CO") as and when experience shows them to be required. Members of the SCCLR include individuals from relevant sectors or professions, such as business, accountancy, legal, company secretarial and academics. It also includes representatives of the Hong Kong Monetary Authority, the Hong Kong Exchanges and Clearing Limited, the Securities and Futures Commission and relevant Government departments. The terms of reference and the current membership list of the SCCLR are at Annex A and Annex B respectively. A list of former non-official members who served in the SCCLR since the commencement of the CO rewrite exercise in mid-2006 is at Annex C.

Role and Work of SCCLR in CO Rewrite

3. The SCCLR is the principal advisory body to the Government on amendments to company law. Over the past decade, it has conducted several major reviews of company law with a view to modernising the law and upgrading the corporate governance regime. Many of the recommendations made by SCCLR have already been enacted into law by various Companies (Amendment) Ordinances.

4. Noting the limitations of the piecemeal approach to amending the CO, we launched the CO rewrite exercise in 2006 with the support of the Legislative Council. SCCLR plays a key role in the rewrite, including advising on all major proposals/ recommendations to reform the CO.

5. In this regard, in order to engage relevant experts and stakeholders at the initial policy formulation stage, we have set up five advisory/working groups to advise on specific issues concerning the rewrite. These include four dedicated Advisory Groups (“AGs”) and the Joint Government/Hong Kong Institute of Certified Public Accountants Working Group to review the accounting and auditing provisions of the CO (“JWG”). The four AGs advised on share capital, distribution of profits and assets and charges provisions; company formation, registration, re-registration and company meeting and administration provisions; directors and officers related provisions; and inspections, investigation and offences and punishment provisions respectively. The AGs comprised representatives from relevant professional and business organisations, government departments, regulatory bodies and academics.¹.

6. As the principal advisory body, the SCCLR was consulted on all the main recommendations made by the AGs and the JWG. Since 2006/07, the SCCLR has held more than 20 meetings and considered more than 50 papers in relation to the rewrite exercise. More details of SCCLR’s work can be found in its Annual Reports².

7. Apart from the SCCLR and the advisory/working groups mentioned above, we have also consulted the public on the major proposals of the rewrite through a series of public consultations conducted from 2007 to 2010. We conducted three public consultations in 2007 and 2008 to gauge views on more complex subjects, including accounting and auditing provisions; company names, directors’ duties, corporate directorship and registration of charges; and share capital, capital maintenance regime and court-free merger procedure. We have

¹ Terms of references and the membership of the four AGs are available at http://www.fstb.gov.hk/fsb/co_rewrite/eng/advisorygroup/advisorygroup.htm.

² Available at http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/other.htm.

also consulted the public on the draft Companies Bill in two phases from December 2009 to August 2010.³ We have considered the public views received and other relevant factors before finalising the Companies Bill.

Financial Services and the Treasury Bureau
21 March 2011

³ The consultation papers and conclusions of the above consultation exercises are available at http://www.fstb.gov.hk/fsb/co_rewrite.

Terms of Reference of the SCCLR

- (1) To advise the Financial Secretary on amendments to the Companies Ordinance as and when experience shows them to be necessary.
- (2) To report annually to the Financial Secretary on those amendments to the Companies Ordinance that are under consideration from time to time by the Standing Committee.
- (3) To advise the Financial Secretary on amendments required to the Securities and Futures Ordinance on matters relating to corporate governance and shareholders' protection.

Current Membership of the SCCLR

Mr Godfrey LAM Wan-ho, S.C. (Chairman)

Mr Stephen BIRKETT

Mrs Anne CARVER

Mr Rock CHEN Chung-nin, J.P.

Mr CHEW Fook-aun

Mr Vincent FAN Chor-wah

Mr GOO Say-hak

Mr Peter GREENWOOD

Ms Roxanne ISMAIL

Mr Johnson KONG Chi-how

Mr Rainier LAM Hok-chung

Mrs Catherine MORLEY

Mr Kenneth NG Sing-yip

Ms Edith SHIH

Dr Kelvin WONG Tin-yau

Ms Benita YU Ka-po

Ex-officio Members

Mr Mark DICKENS, J.P.

Hong Kong Exchanges and Clearing Limited

Mr Stefan GANNON, J.P.

General Counsel

Hong Kong Monetary Authority

Mr Andrew YOUNG

Chief Counsel

Securities and Futures Commission

Ms Ada CHUNG Lai-ling, J.P.
Registrar of Companies

Mr E T O'CONNELL, J.P.
Official Receiver

Mr John LEUNG Chi-yan, J.P.
Deputy Secretary for Financial Services and the Treasury (Financial
Services)

Professor Edward TYLER
Department of Justice

**Former Non-official Members of the SCCLR
since the Commencement of the CO Rewrite Exercise in 2006**

<u>Name</u>	<u>Period of Service</u>
Mr Benjamin YU, S.B.S., S.C., J.P. (Former Chairman)	2004 – 2011
Ms Teresa KO Yuk-yin, J.P.	2005 – 2011
Mr Paul WINKELMANN	2005 – 2011
Mr Patrick WONG Chi-kwong	2005 – 2011
Mr Stephen HUI Chiu-chung, J.P.	2006 – 2010
Mr David P R STANNARD	2003 – 2010
Mr John POON Cho-ming	2003 – 2009
Ms Vanessa STOTT	2005 – 2009
Mr Carlson TONG, J.P.	2005 – 2009
Mr Felix CHAN Kwok-wai, M.H.	2007 – 2008
Ms Paddy LUI Wai-yu, B.B.S., J.P.	2007 – 2008
Mr Michael W SCALES	2001 – 2008
Mr William TAM Sai-ming	2001 – 2007