



# 香港地產建設商會

## THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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### **The Real Estate Developers Association of Hong Kong Comments on the Companies Bill**

The Real Estate Developers Association of Hong Kong supports a comprehensive rewrite of the Companies Ordinance to bring it up to date.

Following are our comments on the specific sections of the Bill:

#### **Part 9 - Division 4 - Subdivision 4: Directors' Report**

This additional disclosure requirement would appear to be superfluous and will certainly increase the reporting burden of public companies which are already governed by the listing rules, having very specific disclosure requirements. As for the private companies, it is provided that they are allowed to opt out by special resolution anyway. It appears that the new requirement is serving no useful purpose. We would recommend status quo.

#### **Part 9 - Division 5 - Subdivision 4: Auditors' Rights and Privileges, etc.**

We have concerns over some of the proposals to extend the auditors' rights to require information. We believe it is far more efficient and cost effective for auditors to deal with officers including senior managers (as at present) rather than having statutory rights of access to all employees and former employees, with the consequential exposure of such persons to potential criminal sanctions. These new criminal offences seem unduly harsh and could have unintended consequences.

#### **Part 10 - Division 2: Directors' Duty of Care, Skill and Diligence**

We accept that the objective test of the standard of care, skill and diligence required to be exercised by a director of a company should be codified, but the subjective test (i.e. the general knowledge, skill and experience that the director has) and other general duties should not and, for the avoidance of doubt, it should be set out clearly in the statute that such duty should be owed by a director of a company to the company only. Common law principles should be preserved for the sake of clarity, and it would be better for this area of the law to be left to the Courts, allowing it to evolve in response to actual situations. Much of the basis for the revisions is based on rules adopted in the UK, but what has been proposed for Hong Kong is a wholesale replacement of common law rules.



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As the statutory duties are drafted in general and broad terms, this may give rise to greater uncertainties particularly when there is no precedent from which reference may be drawn.

### **One General Observation – Headcount Test**

We consider the “headcount test” should be abolished as it deviates from the “one share one vote” principle. Since a very large proportion of shares in Hong Kong’s public companies are held by nominees, the “headcount test” which would limit a single nominee to one vote, is not indicative of the decisions of the beneficial owners of the shares. There are adequate safeguards in the Takeovers Code to protect the interests of minority shareholders.

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**The Real Estate Developers Association of Hong Kong**