To: <bc_03_10@legco.gov.hk>
From: "Daisy Lau"
Date: 08/18/2011 04:58PM
Subject: Bills Committee on Companies Bill seeking views on preparation of simplified financial and directors' reports

Dear Ms. SzeTo,

T hank you foryour letter dated 28 July 2011 seeking our views on preparation of simplified financial and directors' reports.

We enclose our submission on 8 April 2010 to the Financial Services & Treasury Bureau on the subject for your reference.

If you have any questions, please feel free to let us know.

Yours sincerely,

Daisy Lau
Manager-Administration

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International Chamber of Commerce - Hong Kong, China 國際商會 - 中國香港區會
The world business organization

By Email: co_rewrite@fstb.gov.hk and by Hand

8 April, 2010

Companies Bill Team
Financial Services & Treasury Bureau
15/F., Queensway Government Offices,
66 Queensway,
Hong Kong

Dear Sirs,

CO Rewrite Consultation Paper
Draft Companies Bill : First Phase Consultation

We refer to the above Paper and should venture to comment as follows

2. While we support in principle steps to enhance corporate governance and the further application of information technology, we should like to point out that the effectiveness of corporate governance of the board of directors is much conditioned by the provision of information to the board by the executive arm. Corporate governance may also be strengthened if companies would establish a code of business ethics.

3. On the broader adoption of information technology, we believe this should take into account:

a) the digital divide in the community,

b) the authentication of paperless communication,

c) the security of internet communication,

d) the voting right of shareholders not to be compromised by scripless trading or other market practices, and

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e) the updating of information of shareholders, directors or major transactions closer to real time.

Business Facilitation (Chapter 4)

4. We are not sure if this Chapter relates entirely to SMEs. We are not certain about the reasons for setting the criteria for SMEs in the Paper (p. 28). It seems a company with a revenue of HK$50 million or assets of not more than HK$50 million, or having no more than 50 employees could be sizeable, especially in the case of companies limited by guarantee.

5. Since the Paper stresses on the value of enhancing corporate governance, it will be important that any simplification of accounting standard or company report may not affect corporate governance. Particularly we question why annual general meetings may be dispensed with and what safeguards there will be to ward against abuse of the proposal. For example, it is not clear what procedure will be in place to ensure unanimous vote of members would be secured properly. We believe the annual general meeting and other general meetings are important arrangements for shareholders to interact with the board and management or take part in the company's affairs, and are therefore a component to corporate governance. The inactiveness of some shareholders is not a reason for dispensing with an institution, and the cost of general meetings need not be prohibitive.

Part 12: Company Administration and Procedure

6. Note 57 on page 29 relates to the Explanatory Notes on Part 12. Paragraph 39 on page 117 suggests that a company may convene a meeting other than an AGM for passing a special resolution by giving 14 days' notice

only. We consider that the company should rather give 21 days notice so that shareholders may have more time to consider the issue at stake, and the company does not have to call a meeting in haste.

7. Paragraph 40 on page 118 discusses the proxy arrangements. With respect, we question the wisdom of the suggestion to extend proxy to companies limited by guarantee. Under current provisions of the laws the right of vote of a person in the case of a company with shareholding relates to the amount of shareholding he holds. Thus, it will not be surprising if one person has one vote for holding one share, and another person has 1,000 votes for holding 1,000 shares. The right to vote is not equal because of differences in the amount of shareholding among shareholders. In the case of a company limited by guarantee there is no question of shareholding. Each member has one vote whether he is a natural or a legal person. While one member may not wish to exercise his voting right, another member may wish to amass those rights through different ways, including abusive means, violating the spirit of fairness and equity. Guarantee companies are normally non-government organizations, and many are registered as charities under the Inland Revenue Ordinance. Surely, no one would wish to see abuse to occur in those institutions. More importantly, many guarantee companies have a public interest or public character and some are provided with public funds. Abuse in voting through proxy should not be tolerated. Finally, there are guarantee companies which are the representative organizations of functional constituencies of the Legislative Council. As such tolerance of proxy is tantamount to tolerating abusive practices in their internal functioning. Therefore, we suggest that there should be no proxy arrangement for guarantee companies. Members should vote in person and those who are

unable to attend not by their own choice are few and far between. Reference may be made to election for District Councils and the Legislative Council where no proxy is allowed.

"Head Count" Test for Approving Scheme of Compromise or Arrangement (Chapter 6)

8. The Head Count Test we understand is to protect the minority members or creditors. The underlying reason clearly is a recognition of the disadvantaged position of a group of people in respect of voting power in terms of shareholdings held, despite the one share one vote principle. It is to balance the power of those holding majority shares or controlling the board and management. Equality does not necessarily mean fairness.

9. We do not consider it right that market practices or changes in technology should obviate entitlement to voting right. Rather they should be tuned to manifest the exercise of that right.

10. Further we believe that share splitting can be used by those pushing for and those opposing to an issue, and is more likely employed by those pushing an issue. The way to resolve this is to outlaw share splitting.

11. We are of the opinion that the provisions of the Takeover Code are inadequate for the purpose, not to mention the Code does not apply to all companies.

12. On balance, we support the current status should stay, particularly when other jurisdictions also have similar provisions. Since Australia is

reviewing its scheme and related matters, Hong Kong should not take Australia as a useful reference.

13. We hope there may be further consultations, and we shall be happy to offer our views. Thank you for giving us the opportunity to make representations.

Yours faithfully,

Christopher Lewis
Secretary