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**Subcommittee on Subsidiary Legislation Made under
the New Companies Ordinance**

Background brief

Purpose

This paper provides background information on the subsidiary legislation to implement the new Companies Ordinance ("CO"). It also summarizes the discussions when relevant issues were deliberated at the meetings of the Bills Committee on Companies Bill ("the Bills Committee") and the Panel on Financial Affairs ("the FA Panel").

Background

2. The CO was enacted in 1932 with its major provisions originated from the 1929 Companies Act of the United Kingdom ("UK"). The legislation provides the legal framework which enables the business community to form and operate companies, and sets out the parameters within which companies must operate so as to safeguard the interests of those parties who have dealings with them such as shareholders and creditors. In order to modernize the company law to further enhance Hong Kong's status as a major international business and financial centre, the Administration launched a comprehensive rewrite of the CO ("CO Rewrite") in mid-2006, and conducted three topical public consultations in 2007 and 2008 to gauge public views. A draft bill was published for further public consultation in two phases from December 2009 to August 2010.

3. In view of the extensive nature of the CO Rewrite, the Administration has adopted a phased approach by tackling the provisions which affect the operation of live companies in Hong Kong by introducing the Companies Bill ("CB") into

the Legislative Council ("LegCo") in January 2011. The Bills Committee was formed in February 2011 to scrutinize the CB. The hyperlink of the Bills Committee's report is in **Appendix I**. The CB¹ was enacted on 12 July 2012.

Subsidiary legislation to be made for implementation of the new Companies Ordinance

4. The new CO has adopted the same approach as the existing CO of prescribing technical requirements, operational details and fees items in subsidiary legislation so as to facilitate future updates. The Administration has identified 13 pieces of subsidiary legislation that are required to implement the new CO, amongst which 12 pieces will be made by the Financial Secretary ("FS") and subject to negative vetting procedures of the LegCo, and one piece will be made by the Chief Justice ("CJ") and subject to positive vetting procedures. A list of the subsidiary legislation is in **Appendix II**.

5. The Financial Services and the Treasury Bureau and the Companies Registry ("CR") have jointly published documents for public consultation on the subsidiary legislation for implementation of the new CO in two phases in September and November 2012². According to the Administration, a total of 34 submissions were received by end-2012 and the respondents were generally supportive of the proposed subsidiary legislation. The Administration's plan is to introduce the subsidiary legislation subject to negative vetting in batches beginning from the first quarter of 2013. As regards the subsidiary legislation subject to positive vetting, it will be introduced as and when ready. Subject to LegCo's scrutiny, the subsidiary legislation will commence operation together with the new CO, tentatively in the first quarter of 2014.

First batch of subsidiary legislation

6. The first batch of five pieces of subsidiary legislation subject to negative vetting procedures of LegCo were gazetted on 1 February 2013 and tabled at LegCo on 6 February 2013. A brief description on the subsidiary legislation is given below –

¹ The enacted CB was published in the gazette on 10 August 2012 as the new CO (Ordinance no. 28 of 2012). The new CO will be given a new Chapter number. The existing CO is still Cap. 32 but re-titled as Companies (Winding up and Miscellaneous Provisions) Ordinance.

² The hyperlinks of the Administration's consultation papers containing details of the scope and draft provisions of the proposed subsidiary legislation are available at Appendix I.

- (a) the Companies (Words and Expressions in Company Names) Order (to be made by FS under section 101 of the new CO) – to re-enact an order under the existing CO for the purpose of specifying the words and expressions contained in a company's name which required prior approval from the CR;
- (b) the Companies (Disclosure of Company Name and Liability Status) Regulation (to be made by FS under sections 659 and 660 of the new CO) – to provide for various requirements concerning the display of a company's name and the disclosure of the company's liability status;
- (c) the Companies (Accounting Standards (Prescribed Body)) Regulation (to be made by FS under section 452(1) of the new CO) – to specify the Hong Kong Institute of Certified Public Accountants ("HKICPA")³ as the body for the issuance or specification of accounting standards which the financial statements of a company must comply with⁴;
- (d) the Companies (Directors' Report) Regulation (to be made by FS under section 452(3) of the new CO) – to stipulate the requirements concerning the contents of a directors' report (which shall be attached to the company's balance sheet), including the information about the directors' interests under certain arrangements entered into by the company or another company in the same corporate group, donations made by the company and its subsidiary undertakings, shares issued by the company, equity-linked agreements entered into by the company, dividends recommended to be paid by the directors, reasons for the resignation of a director, and directors' permitted indemnity provision; and
- (e) the Companies (Summary Financial Reports) Regulation (to be made by FS under section 425(4) and (5) of the new CO) – to provide for the forms and contents of a summary financial report prepared by companies, and the notification to members of the companies for ascertaining their intention to receive summary reports under the new CO regime.

³ There is no express provision in the present CO which requires accounts to be prepared in compliance with the accounting standards. However, under the Professional Accountants Ordinance (Cap. 50) ("PAO"), certified public accountants (including auditors) are required to observe the professional standards of HKICPA. Section 18A of PAO provides that the Council of HKICPA is responsible for promulgating accounting and auditing standards in Hong Kong.

⁴ The accounting standards prescribed by the HKIPCA include the Hong Kong Financial Reporting Standards, the Hong Kong Financial Reporting Standard for Private Entities and the Small and Medium-sized Entities Financial Reporting Standard.

Major concerns/views expressed by Members

7. The ensuing paragraphs summarize the major views and concerns raised by Members at the meetings of the Bills Committee which may be relevant to the above five pieces of subsidiary legislation, and discussions by the FA Panel on the scrutiny arrangement for the subsidiary legislation at the meeting on 7 January 2013.

Directors' reports and directors' benefits

8. Under the existing CO, the directors' report must be approved by the board of directors, and a copy must be sent to every member and debenture holder of the company together with a copy of the accounts and the auditor's report. Under the new CO, all public companies, and large private companies or large guarantee companies not qualified for simplified reporting are required to prepare as part of the directors' report, a business review which is more analytical and forward-looking than what are required under the existing CO. Section 388 of the new CO provides for the directors' duty to prepare a directors' report, and Schedule 5 to the new CO stipulated the detailed requirements of a business review. The information that is required to be contained in a directors' report will be prescribed by regulation to be made by FS under section 452 of the new CO.

9. On the requirement for a business review in the directors' report, the Bills Committee noted that deputations had expressed different views on the matter. While some organizations considered it unnecessary to impose a statutory requirement on this respect, others opined that the scope of business review should be extended to cover the company's policies and performance in relation to human rights and labour issues in order to enhance the corporate social responsibilities of companies.

10. Bills Committee members had enquired the reasons for not requiring a company to prepare separate directors' remuneration report. The Administration advised that during the public consultation on the draft CB, the majority of respondents did not support the proposal on concern that it would be too onerous and would increase compliance costs for unlisted companies, the vast majority of which were small and medium-sized enterprises. Unlisted companies would be required to include information such as directors' emoluments, retirement benefits etc. by regulations to be made by the FS. As for listed companies, any improvements to the disclosure of the remuneration of directors of listed companies would be considered under the Listing Rules and/or the Securities and Futures Ordinance (Cap. 571). The Administration has invited the Securities and Futures Commission and the Hong Kong

Exchanges and Clearing Limited to keep under review the compliance and effectiveness of the relevant Listing Rules.

Matters relating to company name

11. Bills Committee members noted that the Registrar of Companies ("the Registrar") was provided with the power to grant a licence to certain companies to dispense with the word "limited" in their names under the new CO (i.e. section 103 of the new CO), and enquired about the purpose for granting such a licence. The Administration advised that the target companies were those formed for promoting art, science, religion, charity or any other useful object, and intended to apply its profits, if any, or other income in promoting its objects and to prohibit payment of any dividend to its members. Most of these companies were in essence "charities" under law and the vast majority of them had been granted tax exemption under section 88 of the Inland Revenue Ordinance (Cap. 112) as charities.

12. Section 109 of the new CO provides that where the Registrar is satisfied that the name of a local company gives a misleading indication of the nature of its activities as to be likely to do harm to the public, or that the name constitutes a criminal offence, or that it is offensive or otherwise contrary to the public interest, the Registrar may direct the company to change its name. While under the existing CO, a company may apply to the court to set aside the Registrar's direction or notice in this regard, the new CO provides that the company may appeal to the Administrative Appeals Board ("AAB") in relation to company names. Bills Committee members had enquired about the reasons for allowing companies to appeal to AAB and noted that the Administration's explanation that the proposal was mainly to minimize cost and time by having appeals to be heard by AAB instead of the court.

Penalty levels

13. To ensure that offences of similar nature under the new CO would be punishable with similar penalties and that the penalties involved reflected the relative seriousness of the offences, and to align the penalties for offences committed by Hong Kong companies and those by non-Hong Kong companies, the Administration had taken an exercise to align and rationalize the penalty levels for all offences under the new CO. Bills Committee members had enquired about the general rationale for setting different levels of fines for different offences in the alignment exercise. The Administration explained that the general principles were that penalty should reflect the relative seriousness of the offences and offences of similar nature or seriousness should be punishable with similar penalties. The Bills Committee had also examined the corresponding levels of daily default fines to different levels of fines for

offences having regard to the need to relieve the burden on SMEs relating to minor offences while ensuring quick remedial actions by offenders. Bills Committee members also considered it important for CR to formulate clear policies for prosecuting offences under the CB in order to enhance consistency and transparency in the exercise of the power.

Arrangement for tabling and scrutiny of the subsidiary legislation

14. At the Panel meeting held on 7 January 2013, the Administration briefed members on the proposed subsidiary legislation for implementation of the new CO and discussed with members the arrangement for tabling and scrutiny of the subsidiary legislation. Panel members in general supported the Administration's suggestion that the House Committee might consider setting up one single subcommittee to study the 13 pieces of subsidiary legislation in order to enable the scrutiny work to be conducted in a more efficient and effective manner. Members also expressed views on the batching arrangement and the period available for scrutinizing each batch of the subsidiary legislation.

Latest development

15. At the House Committee meeting on 8 February 2013, Members agreed to form a single subcommittee to study the 13 pieces of subsidiary legislation to be made under the new CO.

Relevant papers

16. A list of the relevant papers on the LegCo website is in **Appendix I**.

List of relevant papers

Date	Event	Papers/Minutes of meeting
25 February 2011	Meeting of the Bills Committee on Companies Bill	Background brief on the Companies Bill (LC Paper No. CB(1)1406/10-11(01)) http://www.legco.gov.hk/yr10-11/english/bc/bc03/papers/bc030225cb1-1406-1-e.pdf Legislative Council Brief on Companies Bill (File Ref.: CBT/17/2C) http://www.legco.gov.hk/yr10-11/english/bills/brief/b20_brf.pdf
29 June 2011	Council meeting	Report of the Bills Committee on Companies Bill (LC Paper No. CB(1)2221/11-12)) http://www.legco.gov.hk/yr10-11/english/bc/bc03/reports/bc030627cb1-2221-e.pdf
12 July 2011	Council meeting	Companies Bill passed at the Council meeting http://www.legco.gov.hk/yr11-12/english/ord/ord028-12-e.pdf
September 2012	Public consultation on subsidiary legislation for implementation of the new Companies Ordinance (Phase One)	Phase One consultation document http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/doc/sub_leg_new_comp_ordinance_ph1_e.pdf
November 2012	Public consultation on subsidiary legislation for implementation of the new Companies Ordinance (Phase Two)	Phase Two consultation document http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/doc/sub_leg_new_comp_ordinance_ph2_e.pdf

Date	Event	Papers/Minutes of meeting
7 January 2013	FA Panel meeting	Administration's paper (LC Paper No. CB(1)358/12-13(04)) http://www.legco.gov.hk/yr12-13/english/panels/fa/papers/fa0107cb1-358-4-e.pdf Administration's paper (LC Paper No. CB(1)385/12-13(02)) http://www.legco.gov.hk/yr12-13/english/panels/fa/papers/fa0107cb1-385-2-e.pdf Background brief (LC Paper No. CB(1)358/12-13(05)) http://www.legco.gov.hk/yr12-13/english/panels/fa/papers/fa0107cb1-358-5-e.pdf Follow-up paper (LC Paper No. CB(1)508/12-13(01)) http://www.legco.gov.hk/yr12-13/english/panels/fa/papers/fa0107cb1-508-1-e.pdf
23 January 2013	Council meeting	Written question raised by Dr Hon Kenneth CHAN on "Policy on public access to government information" Press release http://www.info.gov.hk/gia/general/201301/23/P201301230307.htm Hansard http://www.legco.gov.hk/yr12-13/chinese/counmtg/floor/cm0123-confirm-ec.pdf
30 January 2013	Council meeting	Written question raised by Hon Ronny TONG on "Public consultation on draft bills conducted by Government". Press release http://www.info.gov.hk/gia/general/201301/30/P201301300434.htm Hansard http://www.legco.gov.hk/yr12-13/chinese/counmtg/floor/cm0130-confirm-ec.pdf

Date	Event	Papers/Minutes of meeting
30 January 2013	-	Legislative Council Brief on Companies Ordinance – Companies (Words and Expressions in Company Names) Order, Companies (Disclosure of Company name and Liability Status) Regulation, Companies (Accounting Standards (Prescribed Body)) Regulation, Companies (Directors' Report) Regulation and Companies (Summary Financial Reports) Regulation (CBT/7/6C) http://www.legco.gov.hk/yr12-13/english/subleg/brief/7-11_brf.pdf

A list of the 13 pieces of subsidiary legislation under the new Companies Ordinance

On company names

- (a) Companies (Words and Expressions in Company Names) Order
- (b) Companies (Disclosure of Company Name and Liability Status) Regulation

On company records

- (c) Company Records (Inspection and Provision of Copies) Regulation
- (d) Companies (Residential Addresses and Identification Numbers) Regulation

On accounts and audit

- (e) Companies (Accounting Standards (Prescribed Body)) Regulation
- (f) Companies (Disclosure of Information about Benefits of Directors) Regulation
- (g) Companies (Directors' Report) Regulation
- (h) Companies (Summary Financial Reports) Regulation
- (i) Companies (Revision of Financial Statements and Reports) Regulation

On others matters

- (j) Companies (Model Articles) Notice
- (k) Companies (Non-Hong Kong Companies) Regulation
- (l) Companies (Fees) Regulation
- (m) Companies (Unfair Prejudice Petitions) Proceedings Rules

Note : (1) Items (a) to (l) will be made by the Financial Secretary and subject to the negative vetting procedures
(2) Item (m) will be made by the Chief Justice and subject to the positive vetting procedures.