

CO Rewrite

Rewrite of the Companies Ordinance

Consultation Paper – Executive Summary

Company Names

Directors' Duties

Corporate Directorship

Registration of Charges

Consultation Paper - Executive Summary

The Financial Services and the Treasury Bureau launched a comprehensive rewrite of the Companies Ordinance (“CO”) in mid-2006. Public consultation on proposals to reform the accounting and auditing provisions of the CO was conducted in the second quarter of 2007; consultation conclusions were issued recently.

The present consultation covers the following issues:

Company names

- (a) To tackle possible abuses of the company name registration regime by “shadow companies”, we propose empowering the Registrar of Companies (“Registrar”) to act on a court order directing a defendant company to change its infringing name, and substitute its infringing name with its registration number if the company fails to comply with the Registrar’s direction to change its name;
- (b) We propose that the Registrar may have a discretionary power to approve the registration of a hybrid company name comprising both Chinese characters and English alphabets or words where the applicant can show to the satisfaction of the Registrar that there is a genuine business need;

Directors’ duties

- (c) We seek public views on whether the directors’ general duties which are mainly found in case law should be codified to make them more accessible to the public. We would like to hear views on whether the United Kingdom (“UK”) approach should be followed. The UK has included a duty for directors to promote the success of the company having regard to a wider list of factors, such as the interests of employees, and the impact of the company’s operations on the community and the environment;

Corporate directorship

- (d) We propose that corporate directorship be abolished and restricted so as to improve the accountability and transparency of company operations and the enforceability of directors’ obligations. The option favoured by the Standing Committee on Company Law Reform is to abolish corporate directorship altogether, subject to a reasonable grace period. An alternative is to follow the UK approach which requires that every company must have at least one director who is a natural person so that someone may, if necessary, be held accountable for the company’s actions;

Registration of charges

- (e) We propose that the list of registrable charges be updated by including charges on aircrafts and interests in them and deleting or amending certain duplicated or obsolete items, such as the requirement to register charges securing the issue of debentures, and references to “bills of sale”;
- (f) We propose that the procedure of registration of charges be improved by making the instrument of charge available in full on the public register and by shortening the registration period from five weeks to 21 days so as to reduce the period whereby the charge is “invisible” to third parties; and
- (g) We also invite initial views on whether there is any need to introduce an administrative mechanism for late registration of charges to replace the current system of applying to the court.

The Government will carefully study the comments received during this consultation before taking a final view on the proposals. Other issues, such as share capital, capital maintenance rules and statutory amalgamation procedures will be covered in another public consultation paper to be issued in mid-2008. The final proposals will be incorporated into the White Bill for further public consultation around mid-2009. We plan to introduce the Companies Bill into the Legislative Council, tentatively, in the third quarter of 2010.

Consultation Paper

The consultation paper can be downloaded from <http://www.fstb.gov.hk/fsb>

Please send your comments to us on or before 30 June 2008:

Mail : Companies Bill Team, Financial Services and the Treasury Bureau,
15/F Queensway Government Offices, 66 Queensway, Hong Kong

Fax : (852) 2869 4195

Email : co_rewrite@fstb.gov.hk

For enquiry, please call (852) 2528 9077