



CO Rewrite

Rewrite of the Companies Ordinance

Consultation Paper Highlights

Draft Companies Bill
First Phase Consultation

December 2009

Financial Services and the Treasury Bureau
www.fstb.gov.hk

Consultation Paper Highlights

Objective

The rewrite of the Companies Ordinance ("CO") is a major exercise to update and modernise the legal framework for companies in Hong Kong. A more user-friendly CO will facilitate the conduct of business and enhance Hong Kong's competitiveness and attractiveness as a major international business and financial centre.

What has been done?

During the rewrite, we have consulted the Standing Committee on Company Law Reform ("SCCLR") and dedicated Advisory Groups ("AGs") on major reform proposals. We have conducted three public consultations in 2007 and 2008 to gauge views on a number of complex subjects. Based on the views received as well as the recommendations of the SCCLR and AGs, we have prepared the draft Companies Bill ("CB") for further public consultation in two phases.

Major proposals

The present first phase consultation covers 10 Parts or roughly half of the CB. Several specific issues are also highlighted for consultation. The key legislative changes in the CB are summarised below.

Enhancing Corporate Governance

To enhance transparency and accountability of companies and their operations, we will:

- codify the standard of directors' duty of care, skill and diligence;
- restrict the appointment of corporate directors;
- improve disclosure of company information by requiring public companies and larger private companies to furnish more analytical and forward-looking business review as part of the directors' report;
- strengthen auditors' rights to obtain information for performing their duties;
- enhance shareholders' engagement in the decision-making process and facilitate their participation through the use of information technology;
- foster shareholder protection by strengthening rules on directors' self-dealing and connected transactions, providing for multiple derivative actions and extending the scope of the unfair prejudice remedy.

Ensuring Better Regulations

To ensure that the regulatory regime is effective and business-friendly, we will:

- introduce electronic incorporation and expedited company name approval process to enable companies to be incorporated within one day;
- empower the Registrar of Companies ("Registrar") to tackle "shadow companies";
- enhance the Registrar's powers to help ensure that the information on the public register is accurate and up-to-date and to obtain necessary information for enforcement of the law;
- streamline those regulations which are outdated and no longer serve any purpose (e.g. removing the share qualification requirement for directors);
- streamline and update the regime of registration of charges;
- improve the enforcement regime by updating the provisions on company investigations, offences and penalties.

Business Facilitation

To save compliance and business costs, particularly of SMEs, we will:

- allow more companies to take advantage of simplified accounting and reporting requirements so as to save their compliance and business costs;
- allow companies to dispense with AGMs by unanimous members' consent;
- introduce cheaper and less time-consuming court-free procedures for the reduction of share capital and intra-group amalgamation;
- streamline the buy-back rules for all companies subject to a solvency test.

Modernising the Law

To modernise the law to meet the needs of modern business and to make it more readable, we will:

- abolish the par value regime and to adopt a mandatory system of no-par for all companies with a share capital;
- remove the requirement for authorised capital;
- enable scripless holding and trading of shares and debentures;
- allow electronic communications between a company and its members;
- modernise the language and rearrange the sequence of the provisions in a more logical and user-friendly order.

Specific Issues for Consultation

We would like to seek views on the following issues:

- whether the “headcount test” for approving a scheme of arrangement should be retained or abolished?
- whether residential addresses of directors and identification numbers of directors and company secretaries should continue to be disclosed on public register?
- whether private companies associated with a listed or public company should be subject to more stringent regulations similar to public companies for the purposes of the provisions on fair dealings by directors?
- whether the existing right for shareholders to take common law derivative action should be abolished after the introduction of multiple derivative actions (i.e. allowing a member of a related company to take a statutory derivative action)?

We Want Your Views

The consultation paper and the relevant draft Parts of the CB are available at www.fstb.gov.hk/fsb/co_rewrite or the Companies Registry's website (www.cr.gov.hk). We welcome views on the draft clauses and the issues highlighted above. Please send us your comments **by 16 March 2010**.

A second phase consultation covering the other draft Parts of the CB will be launched in early 2010. We will refine the draft Bill in the light of the public comments received and introduce the CB into the Legislative Council by the end of 2010.

For enquiry, please call 2528 9077 or email co_rewrite@fstb.gov.hk