

**Standing Committee on Company Law Reform  
(SCCLR)**

**The Fifteenth Annual Report**

**1998/99**

# **Standing Committee on Company Law Reform (SCCLR)**

## **Fifteenth Report to the Chief Executive in Council**

### **Subjects considered by the**

### **Standing Committee during 1998/99**

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## **PREFACE**

(i)

### **Terms of Reference of the Standing Committee on Company Law Reform**

- (1) To advise the Financial Secretary on amendments to the Companies Ordinance as and when experience shows them to be necessary.
- (2) To report annually through the Secretary for Financial Services to the Chief Executive in Council on those amendments to the Companies Ordinance that are under consideration from time to time by the Standing Committee.
- (3) To advise the Financial Secretary on amendments required to the Securities Ordinance and the Protection of Investors Ordinance with the objective of providing support to the Securities and Futures Commission in its role of administering those Ordinances.

(ii)

### **Membership of the Standing Committee for 1998/99**

<b><u>Chairman</u></b>	:	The Hon Justice Rogers, JA
<b><u>Members</u></b>	:	Mr Roger T Best
		Mr John R Brewer (up to 31 <sup>st</sup> January 1999)
		Mr Moses Cheng Mo-chi, JP
		Mr Henry Fan Hung-ling, JP
		Ms Betty Ho May-foon
		Mr Gerald Hopkinson
		Mr Edwin Ing (from 1 <sup>st</sup> February 1999)
		Mr Robert G Kotewall, JP, SC
		Mrs Angelina P L Lee, JP
		Mr Winston Poon, SC
		Mr David Shaw (up to 4 <sup>th</sup> May 1998)
		Mr Richard Thornhill (from 1 <sup>st</sup> February 1999)
		Mr Alvin Wong Tak-wai

- Ex-Officio Members** :
- Mr Raymond Tang, Chief Counsel  
The Securities & Futures Commission
  
  - Mr Alec Tsui Yiu-wa, Chief Executive  
The Stock Exchange of Hong Kong Limited
  
  - Mr Charles Barr  
Department of Justice
  
  - Mr A R Hearder, JP  
The Official Receiver (up to 27<sup>th</sup> December 1998)
  
  - Mr T.E. Berry, JP  
The Official Receiver (from 4<sup>th</sup> January 1999)
  
  - Mr Gordon W E Jones, JP  
The Registrar of Companies
  
  - Mr David T R Carse, JP  
Deputy Chief Executive  
The Hong Kong Monetary Authority
  
  - Mrs Rebecca Lai, JP  
Deputy Secretary for Financial Services (up to 28<sup>th</sup> February 1999)
  
  - Miss AU King-chi, JP  
Deputy Secretary for Financial Services (from 1<sup>st</sup> March 1999)
- Secretary** :
- Mr D O Kitchell, JP (up to 30<sup>th</sup> November 1998)
  
  - Mr J S Bush (from 1<sup>st</sup> December 1998)

(iii)

**Meetings held during 1998/99**

One Hundred and Thirtieth Meeting	-	2 <sup>nd</sup> May 1998
One Hundred and Thirty First Meeting	-	13 <sup>th</sup> June 1998
One Hundred and Thirty Second Meeting	-	11 <sup>th</sup> July 1998
One Hundred and Thirty Third Meeting	-	26 <sup>th</sup> September 1998
One Hundred and Thirty Fourth Meeting	-	24 <sup>th</sup> October 1998
One Hundred and Thirty Fifth Meeting	-	5 <sup>th</sup> December 1998
One Hundred and Thirty Sixth Meeting	-	23 <sup>rd</sup> January 1999
One Hundred and Thirty Seventh Meeting	-	6 <sup>th</sup> March 1999

## **EXECUTIVE SUMMARY**

The Standing Committee on Company Law Reform (SCCLR) was formed in 1984 to advise the Financial Secretary on amendments to the Companies Ordinance and other related ordinances. The SCCLR reports annually, through the Secretary for Financial Services, to the Chief Executive in Council on amendments that are under consideration.

From 1<sup>st</sup> April 1998 to 31<sup>st</sup> March 1999, the SCCLR held a total of 8 meetings. The Committee continued its examination of the 12 chapters of the Consultancy Report on the Review of the Companies Ordinance. Although this initial examination of the Consultancy Report took up a large part of its time, the SCCLR considered a number of other matters and legislative proposals aimed at updating and improving the provisions of the Companies Ordinance. During this reporting period, the SCCLR considered a consultation paper on the Winding-up Provisions of the Companies Ordinance prepared by the Law Reform Commission's Sub-Committee on Insolvency. The SCCLR also endorsed proposals :-

- (a) By the Companies Registry to provide a comprehensive index of directors which would cross reference a director's other directorships;
- (b) By the Official Receiver's Office to provide for the appointment of insolvency practitioners to be provisional liquidators in summary compulsory liquidations;
- (c) By the Companies Registry to amend the date for filing of annual returns by private companies;

- (d) By the Companies Registry to provide a statutory procedure to deregister solvent defunct private companies;
- (e) By the Hong Kong Institute of Company Secretaries to amend section 116B to enable private companies to dispense with the annual general meeting and any other general meeting if all shareholders agree to and sign written resolutions relating to the business to be conducted at such meetings; and

A brief summary of the 10 chapters of this Annual Report is set out in the following table :-

Chapter	Subject Matter	Recommendations/Remarks
1	Review of the Hong Kong Companies Ordinance – Consultancy Report	Members agreed that further research needed to be done and papers written and a report prepared on the various recommendations made by the Consultants.
2	A Consultation Paper dated April 1998 on the Winding-up Provisions of the Companies Ordinance prepared by the Law Reform Commission's Sub-committee on Insolvency.	Members were invited to submit individual comments on the Consultation Paper to the Law Reform Commission but, in general, approved the paper.



Chapter	Subject Matter	Recommendations/Remarks
3	Directors' Index	Members endorsed the proposal to amend sections 158 and 333 of the Companies Ordinance to dispense with the requirement for listed companies to file other directorships held by their directors.
4	Appointment of Provisional Liquidators	Members endorsed proposals to amend section 194(1)(a) of the Companies Ordinance to enable the Official Receiver to appoint "insolvency practitioners" as provisional liquidators in his place on the making of a winding-up order in summary cases.
5	Date for Filing Annual Returns of Private Companies to be the anniversary of their incorporation	Members endorsed proposals to amend section 107(3) of the Companies Ordinance to exclude the exemption for private companies to file annual returns in the year of their incorporation if no AGM is held and to delete section 109(1B).
6	The Official Receiver's Annual Report	The Official Receiver briefed members on this Report.
7	The Registrar of Companies Annual Report	The Registrar of Companies briefed members on this Report.

Chapter	Subject Matter	Recommendations/Remarks
8	Statutory Procedure to Deregister Solvent Defunct Private Companies	Members endorsed proposals to introduce amendments to the Companies Ordinance to provide a statutory procedure for application to the Registrar of Companies to deregister solvent defunct private companies.
9	Resolutions without Meetings by Unanimous Written Consent	Members endorsed a proposal to amend section 116B of the Companies Ordinance to clarify that private companies could pass resolutions by unanimous written consent without the need to hold meetings and to remove the requirement to hold an annual general meeting.
10	Treasury Shares - A Consultation Paper by the Securities and Futures Commission	Members gave a qualified and guarded approval to treasury shares provided that regulations were made to prevent abuses and ensure disclosure and transparency.

## *Chapter 1*

### **Review of Hong Kong Companies Ordinance**

#### **Consultancy Report**

1.1 In all its meetings this year, except the 133rd, the SCCLR continued its collective examination of the Consultants' Report and considered the recommendations contained in

- Chapter 1 : General Recommendations for a New Business Corporations Ordinance;
- Chapter 8 : Fundamental Changes;
- Chapter 9 : Solvent Dissolution and Liquidation;
- Chapter 10 : Private Companies/Closely Held Corporations; and
- Chapter 11 : Foreign Corporations/Oversea Companies.

1.2 Members considered the written submissions by the 28 persons and institutions to the Secretary for Financial Services as a result of the public consultation exercise from 1st May 1997 to 31st March 1998. The last of the public comments was received on the 28th August 1998. Some commentaries were restricted to certain recommendations only whereas others, mainly professional institutions and one large firm of solicitors gave their opinions on virtually all the recommendations. As a consequence, the SCCLR has the benefit of the opinions of a wide section of

the accounting, banking, company secretarial, commercial and legal community of Hong Kong.

1.3 It was decided at the 135th meeting that discussion on chapters 2 and 12 being the "Administration of the Ordinance" and "Transitional Provisions" respectively should be postponed until the Committee had reached firm conclusions on all the other recommendations in the Consultants' Report. Furthermore, "Transitional Provisions" would only be necessary if radical changes were made in any new Companies Ordinance.

1.4 It was also decided at the 135th meeting that, after completing the first collective examination of the Consultancy Report, further research ought to be undertaken on the subjects upon which the Consultants had made recommendations and the opinions given through the public consultation exercise as well as some topics upon which the Consultants had made no recommendations. Subsequently, it was agreed at the 136th meeting that small task force groups of members be set up to discuss further and make draft reports on specific topics and subject areas of the Consultants' Report. The drafts could then be submitted to the full Committee for consideration, any necessary amendments and adoption by all the members. Ms Betty Ho May-foon, a member of the Standing Committee and a teaching member of the Faculty of Law at the University of Hong Kong, agreed to do the further research and to collate the recommendations of the Consultants, the initial views expressed by members and those given through the public consultation exercise, and to prepare study papers on various topics covered in the Consultancy Report. Each paper would contain an analysis of the existing law and a comparison of the

Consultants' recommendations, the public comments and the views of the SCCLR so that the small task force could recommend an appropriate view on each topic. It is hoped that the SCCLR will be able to complete its report on all the recommendations made by the Consultants by the end of this year.

- 1.5 At its 137th meeting held on the 6th March 1999, the Standing Committee endorsed the contents of the first paper produced by Ms Ho on creditor protection and planned to consider 5 further papers before the end of July 1999.

## ***Chapter 2***

### **A Consultation Paper dated April 1998 on the Winding-up Provisions of the Companies Ordinance prepared by the Law Reform Commission's Sub-Committee on Insolvency**

2.1 The Secretary of the Sub-Committee, who attended the 131st meeting of the SCCLR on the 13th June 1998, introduced the paper and gave a general explanation of its proposals emphasising the following points :-

- (i) Insolvency and members voluntary liquidation should be placed in a separate ordinance;
- (ii) The licensing of insolvency practitioners; and
- (iii) The reduction of preferential payments in insolvency to two instances, namely claims relating to a contract of general insurance and small deposits in banks. As the Protection of Wages on Insolvency Fund established under the Protection of Wages on Insolvency Ordinance adequately covered the preferential element of employees' claims, all other preference payments should be abolished.

2.2 Members were concerned that the Consultation Paper had not dealt with either the subjects of cross-border insolvency or the supervision and control of liquidators and provisional liquidators, and suggested that section 228A of the Companies Ordinance may be abused. The secretary informed the meeting that the United Nations initiative on adopting the Draft Model Law on Cross-border Insolvency and section 228A would be fully addressed by the Sub-Committee at a later stage.

2.3 Members were invited to submit individual comments on the Consultation Paper direct to the Law Reform Commission but, in general, approved the paper.

## *Chapter 3*

### **Directors' Index**

#### **Summary of Recommendation**

- 3.1 At the 132nd meeting, members endorsed a proposal by the Registrar of Companies to remove the requirement in sections 158 and 333 of the Companies Ordinance for listed companies to report the particulars of other directorships held by their directors and any changes to these directorships.

#### **Background**

- 3.2 Sections 158 and 333 of the Companies Ordinance require companies to keep a register of their directors and report the particulars of these directors and any changes of the particulars to the Registrar of Companies. In addition, listed companies are required to report the particulars of any other directorships held by their directors and any changes to these directorships to the Registrar of Companies. The purpose of the latter provision was to ensure that the Company Registry's computerized index showing all the directorships held by the directors of listed companies was kept up-to-date having regard to the technical problems in maintaining that index. However, many listed companies were experiencing difficulty in complying with these sections in a timely fashion because they had difficulty in obtaining details of changes from their director which was something outside their control, as a result, many such companies were being prosecuted for non-compliance with these sections and complained to the Registrar of their



inability to comply with the law in a timely manner.

- 3.3 In November 1998, the Companies Registry completed a major exercise to expand the amount of data held on its computerized database to include, inter-alia, information on the directors of all registered companies in Hong Kong. It is hoped that this will be made available for on-line searching by customers in their offices within the first half of 2000. Once this expanded database is available for public search, it will be possible for the computer system to make the necessary cross-referencing with a director's other directorships using the director's Hong Kong Identity Card Number (HKID No.) as the unique identifier or passport number if there is no HKID No. As a result, listed companies would not need to report changes of directorships which their directors hold in other companies as this information would be picked up automatically by the computer upon their being reported to the Registry by the company concerned. Consequently, it will be possible to dispense with the statutory reporting requirements in sections 158 and 333 of the Companies Ordinance. The relevant amendments have been included in the Companies (Amendment) Ordinance 1999 enacted on 30 June 1999.

## ***Chapter 4***

### **Appointment of Provisional Liquidators under Section 194(1)(a) and other Consequential Amendments**

#### **Summary of Recommendation**

- 4.1 At the 133rd meeting, members endorsed a proposal to amend section 194(1)(a) of the Companies Ordinance to allow the Official Receiver to appoint a provisional liquidator who could thereafter be eligible to be liquidator in summary court windings-up and that such a provisional liquidator's powers of sale be limited to the sale of perishable goods and assets likely to diminish significantly in value up to an aggregate value of HK\$100,000 with a caveat that such a sale to the directors or associates of the company would need the consent of the Official Receiver or the Court. Members also endorsed the proposals to amend section 216 of the Companies Ordinance to enable the Court to appoint insolvency practitioners to be special managers in situations where the resource constraints in the Official Receiver's Office place limitations on the Official Receiver's ability to carrying out his duties.

#### **Background**

- 4.2 At the 132nd meeting, the Official Receiver briefed members on proposals to enable the Official Receiver to appoint accountant insolvency practitioners to be provisional liquidators of companies going into compulsory liquidation to help

with the administration of the increasing number of companies going into liquidation with assets less than HK\$200,000 (summary cases). At present, the Official Receiver automatically becomes provisional liquidator on the making of a winding-up order by the Court. Thereafter, he appoints, as his agent, an insolvency practitioner on a roster basis from the Administrative Panel of Insolvency Practitioners for Court Windings-up to carry out the duties of the provisional liquidator and thereafter liquidator. Under a scheme of financing, the Government underwrites the insolvency practitioner's cost of each summary case, not handled by the Official Receiver, up to a maximum of \$60,000 if the assets are insufficient to cover their costs up to this amount. The Official Receiver also proposed that section 216 be amended to enable the Court to appoint a special manager in appropriate cases where the resources of the Official Receiver limit the carrying out of his duties; such an appointment to be from the administrative panel of insolvency practitioners.

- 4.3 Members approved the proposal in principle but were concerned about the degree of control that could be exercised over such appointed provisional liquidators.
- 4.4 At the 133rd meeting held on the 26th September 1998, the Official Receiver proposed and members accepted that, where the Official Receiver appoints a provisional liquidator in his place, that person shall only have power to dispose of perishable goods or assets likely to diminish significantly in value up to a maximum aggregate amount of HK\$100,000. All other sales, including any sales to directors or associates of the company, will need the consent of the Official Receiver or the Court.

## ***Chapter 5***

### **Date for Filing Annual Returns of Private Companies**

#### **Summary of Recommendation**

- 5.1 At the 134th meeting, members endorsed a proposal submitted by the Registrar of Companies to amend section 107(3) of the Companies Ordinance to exclude the exemption for private companies having a share capital to file annual returns in the year of their incorporation if no annual general meeting is held and to delete the related section 109(1B).

#### **Background**

- 5.2 The statutory criteria for ascertaining the date by which a private company has to file its first annual return have become so complicated that staff of the Companies Registry are spending an inordinate amount of time explaining these requirements to members of the public. Furthermore, the fact that the late filing of annual returns results in higher annual registration fees has also subjected the 'complicated' filing requirement to further criticism and complaint. In order to ascertain the date upon which the first annual return has to be filed, an intricate relationship between the date of incorporation, the due date for holding the first A.G.M. and the actual date of the A.G.M. have to be taken into account. However, if section 107(3) was amended and section 109 deleted as proposed, a private

company having a share capital would have to file its annual return within 42 days of the anniversary of its incorporation commencing with its first anniversary. This would substantially simplify the statutory filing regime and hopefully improve the compliance rate.

## ***Chapter 6***

### **Official Receiver's Annual Departmental Report 1997/98**

6.1 At the 135th meeting, the Official Receiver's Annual Departmental Report was tabled for discussion and summarised by the Official Receiver. Members raised questions about the two Administrative Panels of Insolvency Practitioners for Court Windings-up and were informed that the number of firms now on each panel had increased to 15. The qualifications for a firm to become a member of Panel A (Liquidations with assets in excess of HK\$250,000) are :

- The firm must have 4 professional accountants.
  
- The firm must have 2 insolvency practitioners i.e. they have 600 chargeable hours of insolvency work experience over the last 3 years or 750 hours over the last 5 years or 10 unconnected cases (excluding members voluntary liquidations over the last 5 years.
  
- There are 2 appointment takers, one of whom must be a partner and the other partner equivalent, one must be an insolvency practitioner and both must be members of the Hong Kong Society of Accountants.

The qualifications for a firm to become a member of Panel B are :

- The firm must have 3 professional accountants of which 2 are members of the Hong Kong Society of Accountants and have 200 hours of chargeable insolvency work experience (members voluntary winding-up only to be recognised at 50% discount).
  
- The 2 appointment takers must be professional accountants, one of whom must be a partner or sole proprietor, the other must have 5 years' post qualification work experience and be acceptable to the Official Receiver as being a partner equivalent.

## *Chapter 7*

### **Companies Registry Annual Report 1997/98**

- 7.1. At the 135th meeting, the Companies Registry Annual Report was tabled for discussion. The workload statistics disclosed that, compared to the previous financial year there had been an increase of 8.5% and a decrease of 33% in the number of incorporations of public and private companies respectively. The number of oversea companies registering under Part XI of the Companies Ordinance had increased by 8.5%.
- 7.2 As in previous years, 1997-98 had seen a continuous enhancement of the services offered to customers of the Registry. The programme to review and redesign the specified forms used to file statutorily required information with the Registry was completed in early April 1998. As a result, a total of 26 new forms were introduced with effect from 1 May 1998 to supplement the 13 forms already introduced in February 1997. All 39 forms have been available for sale in the form of booklet, diskette or individual copies at the Registry's offices since 1 May 1998. Other service level improvements which took place during the year included the introduction of an on-line search service of the company names and document indices through the Internet, which was implemented in July 1997, and the extension of office hours.



7.3 One of the Registry's principal aims is to allow customers and staff to have quick access to the company information filed with the Registry. In this respect, a considerable part of the exercise to expand the Registry's computerized database has been completed: converted data included the registered office addresses of 447,000 companies, about 1.2 million records of directors' particulars and about 450,000 records of secretaries' particulars.

7.4 The major purpose of the database expansion project is to facilitate the provision of an on-line search service. The feasibility study on the Companies Registry On-line Public Search System (CROPS) was completed during 1997. The advent of this on-line service is expected to save time for customers on the one hand and alleviate the crowded conditions in the Public Search Hall on the other.

## ***Chapter 8***

### **Statutory Procedure to Deregister**

### **Solvent Defunct Private Companies**

#### **Summary of Recommendation**

- 8.1 At the 136th meeting, members endorsed proposals to amend the Companies Ordinance to provide a statutory procedure for application to the Registrar of Companies to deregister solvent defunct private companies.

#### **Background**

- 8.2 At the 133rd meeting, the Registrar of Companies explained that the Companies Registry has, in many instances, been providing a de facto free corporate deregistration service.
- 8.3 Under sections 290A and 291 of the Companies Ordinance, the Registrar of Companies may strike a company off the register if it has failed to file an annual return for two consecutive years or if he has reason to believe that it is not carrying a business or in operation. However, for a considerable period of time, many people involved in the formation and secretarial administration of companies have applied to the Registrar for a striking off under section 291 rather than go through the more expensive and time consuming process of winding-up and dissolution even although the powers of the Registrar under this section are

discretionary not mandatory.

8.4 As a trading fund department, the Companies Registry must give priority to the bulk of its public services which are time sensitive and revenue generating. In this context, no priority can be given to providing a free deregistration service and, as at 1st September 1998, a total of 44,873 companies had applied to be struck-off. On the basis of current progress, it will take at least four years to clear this backlog, without allowing for further applications.

8.5 The Consultants' Report on the Review of the Hong Kong Companies Ordinance recommended that there should be statutory provision for voluntary dissolution of a company by simple filing. In addition, the Hong Kong Institute of Chartered Secretaries proposed to the Sub-Committee on Insolvency of the Law Reform Commission that a simplified procedure to dissolve companies should be introduced and the Sub-Committee has endorsed this proposal.

8.6 Quite separately, having regard to the situation outlined in paragraphs 8.3 and 8.4 (above), the Registrar of Companies has found it necessary to review the current striking-off policy. As a result of this review and taking account of views expressed by the Hong Kong Society of Accountants, it is proposed to introduce a new statutory procedure to deregister defunct, solvent private companies based on similar provisions in the Australian Corporations Law. Under this procedure, a private company, one of its directors or members may apply to the Registrar of Companies to deregister the company if all the members agree. The grounds for such an application are to be that the company has never commenced business or

operation or has ceased business for a period of 3 months before the application. The company must have no outstanding liabilities and written notice of no objection, given by the Commissioner of Inland Revenue, must accompany the application. The Registrar of Companies will publish notice of the proposed deregistration in the Gazette and objections can be raised during a period of 3 months after the date of publication. If no objections have been received at the end of the period, the Registrar may publish a second notice in the Gazette declaring the company to be deregistered whereupon the company is dissolved. The Registrar will be given power to re-instate a company deregistered as a result of a mistake on his part and the Court may order the Registrar to re-instate a company within 20 years of deregistration if it is satisfied that it is just to do so.

8.7 Section 290A, which gives the Registrar power to strike a company off the register for failure to file two annual returns, will be repealed because the continued existence of this section would reduce the incentive to use the new deregistration procedure but section 291 will remain so that the Registrar retains a discretionary power to strike-off companies. A key element in the new procedure is that anyone who knowingly or recklessly gives false or misleading information in any application will be subject to severe sanctions.

8.8 Members made various suggestions on the proposals. These were incorporated into the draft legislation which was tabled at the 136th meeting held on the 23rd January 1999 and approved by members.

8.9 The proposed amendments have been incorporated in the Companies (Amendment) Ordinance 1999 enacted on 30 June 1999.

## ***Chapter 9***

### **Resolutions without Meetings by Unanimous Written Consent**

#### **Summary of Recommendation**

- 9.1 At the 137th meeting, members endorsed a proposal to amend section 116B of the Companies Ordinance along the lines of sections 381A, 381B and 381C of the U.K. Companies Act 1985 together with the supporting Schedule 15A to enable private companies to pass unanimous resolutions to be recorded in writing without the necessity of holding meetings of the company and be able to dispense with the holding of the annual general meeting provided that, in both cases, all members are supplied with all necessary written documents, reports or accounts before signing such resolutions, and make any other amendments necessary to achieve this end.

#### **Background**

- 9.2 At the 115th meeting, members agreed to the establishment of a Sub-Committee to review the working and scope of section 116B and to advise whether or not further legislation was required to clarify whether or not the section would override the wording of those provisions in the Companies Ordinance which state that certain powers or functions of a company can be exercised only in general meeting.

9.3 The Sub-Committee reported that it thought that section 116B did not, in certain instances, entitle a company to dispense with holding a general meeting e.g. section 53(4), and recommended the repeal of section 116B and its replacement along the lines of section 381A, 381B and 381C of the U.K. Companies Act 1985 together with the supporting Schedule 15A. It also recommended the removal of all references in the Companies Ordinance to the requirement that particular resolutions must be passed in general meeting.

9.4 At the 137th meeting, members discussed the report of the Sub-Committee. In particular, doubts were expressed as to whether it was necessary to remove requirements in other sections that particular resolutions must be passed in general meeting if the Ordinance was amended along the lines of the U.K. Companies Act 1985 as recommended. Members also approved private companies being able to dispense with annual general meetings provided that the business usually carried out at the annual general meeting was conducted by means of a unanimous written resolutions. Members also proposed that, where such resolutions were used, all documentation, information, accounts and papers relevant to the resolution should be provided to the members before or at the time of their signing the resolutions.

## ***Chapter 10***

### **Treasury Shares - A Consultation Paper by the Securities and Futures Commission**

#### **Summary of Recommendation**

- 10.1 At the 136th meeting, members gave a qualified and very guarded approval to the paper.

#### **Background**

- 10.2 The SFC had been invited by the Financial Services Bureau to review the concept of treasury shares as part of its review of the Share Repurchase Code. At present, a listed company is permitted to repurchase its own shares out of distributable profits or the proceeds of a fresh issue of shares but, upon repurchase, the shares are automatically cancelled. The SFC considered that a relaxation of the law to permit a publicly listed company to hold repurchased shares in treasury would be beneficial as it would give these companies greater flexibility for the better use of their capital and promote liquidity in the market. It was thought that, provided regulatory safeguards were imposed to avoid shares being sold purposely below par, the temptation to use inside information and the apparent proposal that treasury shares would not be subject to the rules preventing shares being issued at a discount, it would be beneficial for a listed company to have the freedom to hold its repurchased shares in treasury until it wished to use them again. The paper



stated that the proposal had very wide support from members of the Listing Committee and would be particularly welcomed by companies which had a diversified shareholding. It was also pointed out at the meeting, that the repurchase and holding of treasury shares may be attractive to a company which had excess cash on its hands but was unable to find a suitable investment vehicle for this cash. Among other things, members expressed concern as to whether profit earned from the resale of treasury shares would go into capital reserve rather than current account and this area should be examined further before treasury shares are allowed to be resold.

- 10.3 Members wished to see and approve the detailed proposals for the necessary legislative changes and the safeguarding regulations before they were able to give their full support to the proposal.