

Standing Committee on Company Law Reform

The Thirty-Seventh Annual Report

2022 / 2023

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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 and the Companies (Winding Up and Miscellaneous Provisions) Ordinance as and when experience shows them to be necessary.
- (2) To report annually to the Financial Secretary on those amendments to the Companies Ordinance and the Companies (Winding Up and Miscellaneous Provisions) 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 and Futures Ordinance on matters relating to corporate governance and shareholders' protection.

(ii)

Membership of the Standing Committee for 2022/2023

Chairman: Mr Johnny MOK, SC, BBS, JP

Members: Mr Clement CHAN Kam-wing, MH, JP (up to 31.1.2023)
Ms Ivy CHEUNG Wing-han (from 1.2.2023)
Mr Paul CHOW Koon-ying
Ms Christine CHUNG Wai-yin
Ms Julianne Pearl DOE
Ms Sabrina HO Shuk-ying
Mr Geoffrey Edward KAO (from 1.2.2023)
Mr Dennis HO Chiu-ping
Mr Jason KARAS
Ms Rachel LAM Yan-kay, SC
Mr LOW Chee-keong

	Ms Gillian MELLER	(up to 31.1.2023)
	Mr Albert NG Kong-ping	
	Ms Fion NG Siu-mui	
	Mr David John SIMMONDS	(from 1.2.2023)
	Mr Bernie TING Wai-cheung	(up to 31.1.2023)
	Ms Jacqueline WALSH	
	Mr Joe WAN Pui-lun	
	Ms Tiffany WONG	
<u>Ex-Officio</u>	Ms Bonnie CHAN Yi-ting	(up to 31.1.2023)
<u>Members:</u>	Head of Listing Hong Kong Exchanges and Clearing Limited	
	Ms Katherine NG Kit-shuen	(from 1.2.2023)
	Head of Listing Hong Kong Exchanges and Clearing Limited	
	Mr Stefan GANNON, JP Special Adviser to CE Hong Kong Monetary Authority	
	Ms Annabel LEE Tung-mei Deputy Chief Counsel, Legal Services Division Securities and Futures Commission	
	Ms Kitty TSUI Lai-ching	(up to 24.7.2022)
	Registrar of Companies (Ag)	
	Miss Helen TANG, JP	(from 25.7.2022)
	Registrar of Companies	
	Ms Phyllis MCKENNA, JP Official Receiver	
	Mr Sam HUI Chark-shum, JP Deputy Secretary for Financial Services and the Treasury (Financial Services)	
	Ms Quinnci WONG Hoi-kam Senior Assistant Law Officer (Civil Law) Department of Justice	
<u>Secretary:</u>	Miss Anita TONG	(up to 31.12.2022)
	Ms Majestic YEUNG	(from 1.1.2023)

(iii)

Meeting held during 2022/2023

		Date of meeting
Two Hundred and Thirty-first Meeting	-	13.3.2023
Discussion Paper: Proposed company re-domiciliation regime in Hong Kong		

(iv)

Papers circulated during 2022/2023

		Date of dissemination
Information Paper		
Legislative Council Panel on Financial Affairs Paper – Proposed legislative amendments to the Bankruptcy Ordinance and Companies (Winding Up and Miscellaneous Provisions) Ordinance	-	27.4.2022
Discussion Paper		
Proposal to facilitate companies to hold virtual or hybrid general meetings	-	14.10.2022
Implementation of a risk-based capital regime for the insurance industry of Hong Kong – Proposed amendment to the Companies Ordinance	-	14.2.2023

REPORT

The Standing Committee on Company Law Reform (“SCCLR”) was formed in 1984. It advises the Financial Secretary (“FS”) on amendments to the Companies Ordinance (Chapter 622) (“CO”) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) (“CWUMPO”), as well as on amendments to the Securities and Futures Ordinance (Chapter 571) on matters relating to corporate governance and shareholders’ protection. The SCCLR reports annually to the FS through the Secretary for Financial Services and the Treasury on amendments that are under consideration.

2. From 1 April 2022 to 31 March 2023, the SCCLR held one meeting during the year to discuss the legislative proposal to introduce a company re-domiciliation regime in Hong Kong.

3. The SCCLR also received one Information Paper from the Government on the proposed legislative amendments to the Bankruptcy Ordinance and CWUMPO, and provided written responses to two Discussion Papers during the year.

Discussion Paper on “Proposed company re-domiciliation regime in Hong Kong”

Background

4. At the 231st meeting held on 13 March 2023, representatives from the Financial Services and the Treasury Bureau presented the Discussion Paper: “Proposed company re-domiciliation regime in Hong Kong”. Members were briefed on the policy objectives of introducing a company re-domiciliation regime in Hong Kong (the “Proposal”).

5. Members were informed that further to the operation of the re-domiciliation mechanisms for Open-Ended Fund Companies and Limited Partnership Funds since November 2021, the Government would introduce a company re-domiciliation regime to provide facilitation for non-Hong Kong companies to re-domicile to Hong Kong, such that these companies may utilise Hong Kong’s favourable business environment and professional services.

6. Members were informed of the principle of the Proposal that re-domiciliation process would not affect the property, rights, obligations and liabilities, as well as the relevant contractual and legal processes of the companies. Key features of the Proposal included the following: (a) the CO would be amended to introduce an inward re-domiciliation regime which would be as inclusive as possible; (b) the regime would be applicable to types of companies that could be formed in Hong Kong or their comparable overseas incorporation types; and (c) no economic substance test would be imposed to screen out companies by their income, assets or size.

7. Members were also briefed that the Registrar of Companies (“R of C”) would be empowered to administer and approve applications of company re-domiciliation. In processing the applications, R of C would take into account factors including the applicants’ integrity, solvency as well as protection of their members and creditors. Upon successful application, the company would be registered in the Companies Register of Hong Kong and a certificate of re-domiciliation would be issued to it. To complete the process, the company should notify the R of C and provide evidence of deregistration in its original place of incorporation within 60 days after the certificate of re-domiciliation was issued.

8. Members were informed that the Government would continue to engage stakeholders on the Proposal with a view to developing the relevant legislative amendment instrument for submission to the Legislative Council in 2023/2024.

Discussion Outcomes

9. Members discussed the potential implications of the re-domiciliation process on the continuity of legal identity and existing contracts of a company upon re-domiciliation. Members noted the merits of not imposing economic substance test on the applicant companies. On the question of whether the Companies Registry would have sufficient resources and the requisite expertise to deal with re-domiciliation applications and foreign law issues, members suggested that companies could be requested to submit certain mandatory legal opinions when making applications for re-domiciliation. Members took the view that specific benefits for the applicant companies under the Proposal could be explored to enhance the attractiveness of the regime.

10. Upon conclusion of discussion, members were generally in support of the Proposal.

Discussion Paper on “Proposal to facilitate companies to hold virtual or hybrid general meetings”

Background

11. The Discussion Paper: “Proposal to facilitate companies to hold virtual or hybrid general meetings” was circulated to members on 14 October 2022 for consideration. The CO provided that a company must hold an annual general meeting within the prescribed time. The manner of holding a general meeting was governed by the provisions in the CO, the Companies (Model Articles) Notice (Chapter 622H) (“Model Articles”) (if not excluded or modified by the company) and the company’s own articles of association. With the advancement of technology, members of a company could participate in virtual meetings using electronic communication technology conveniently and effectively. A number of comparable common law jurisdictions have introduced specific legislative provisions allowing companies to hold general meetings virtually or in hybrid mode, instead of just holding the meetings at physical locations.

12. Taking into account stakeholders’ views and international practices, the Government considered it timely to further modernise the CO and Model Articles to expressly cater for companies holding fully virtual general meetings as well as a mixed mode of such virtual general meetings and members attending at physical location i.e. hybrid general meetings.

13. It was proposed to amend the CO and Model Articles to (a) recognise virtual meeting technology having the same status as “place(s)” in the contexts of holding general meetings; (b) provide that the virtual meeting technology to be used for holding virtual or hybrid general meetings should allow a person to listen, speak and vote at the meeting without being physically present at it; and (c) provide that a company may hold fully virtual or hybrid general meetings if it is not expressly prohibited under the company’s articles of association. Members’ views and suggestions were invited on the proposal.

Consultation Outcomes

14. Members unanimously supported the legislative proposals as set out in the discussion paper with comments on the operational detail.

Discussion Paper on “Implementation of a risk-based capital regime for the insurance industry of Hong Kong – Proposed amendment to the Companies Ordinance”

Background

15. The Discussion Paper: “Implementation of a risk-based capital regime for the insurance industry of Hong Kong - Proposed amendment to the Companies Ordinance” was circulated to members on 14 February 2023 for consideration.

16. Members were informed that the CO provided for, *inter alia*, the determination of realised profits and realised losses that could be distributed by insurers which carry on long term business (the “determination method”). The Government was making preparation for the implementation of a risk-based capital (“RBC”) regime for the insurance industry of Hong Kong and changes brought by this new regime were expected to affect the determination method.

17. Members were also informed that section 293 of the CO specified an approach for determination of realised profits and realised losses for insurers with long term business. Under the current basis, the realised profits in relation to a long term insurance policy would emerge, and therefore became distributable by the insurer, gradually across the contract boundary of the insurance contract. Under the proposed RBC regime, there would be a change of valuation method. The valuation of insurance liabilities would be on economic basis and the profits in relation to a long term insurance contract would emerge, and therefore became distributable by the insurer, immediately upon sale. This would be inconsistent with the long term nature of insurance contracts for which the earning and distribution of profits should be evolved throughout the whole contract period. To rationalise the determination method for insurers carrying on long term business under the RBC regime, it was proposed to repeal section 293 of the CO. As a result, insurers would determine the distributable profits of long term business based on the financial statements prepared under the Hong Kong Financial Reporting Standards 17, where profits are recognised

gradually across the contract boundary of insurance contract. Members were invited to comment on the proposal.

Consultation Outcomes

18. Members generally supported the legislative proposals as set out in the discussion paper with comments on the operational detail.