

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

**The Seventeenth Annual Report**

**2000/2001**

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

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

#### **Subjects considered by the**

#### **Standing Committee during 2000/2001**

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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 2000/2001**

**Chairman** : The Hon Mr Justice Rogers, V-P, JP

**Members** : Mr Roger T Best, JP  
Mr Henry Fan Hung-ling, JP  
Ms Betty Ho May-foon  
Mr Gerald Hopkinson (up to 31<sup>st</sup> January 2001)  
Mr Edwin Ing (up to 31<sup>st</sup> January 2001)  
Mrs Angelina P L Lee, JP  
Mr Winston Poon, SC  
Mr Richard Thornhill  
Mr Alvin Wong Tak-wai  
Mr Ian Perkin  
Mr Randolph Sullivan  
Mr Peter S H Wong  
Mr Michael W Scales (from 1<sup>st</sup> February 2001)

Mr William Tam Sai-ming (from 1<sup>st</sup> February 2001)

**Ex-Officio Members** : Mrs Alexa Lam, Chief Counsel  
The Securities & Futures Commission

Mr Alec Tsui Yiu-wa, Chief Executive (up to 31<sup>st</sup> July 2000)  
The Stock Exchange of Hong Kong Limited

Mr Lawrence Fok, Chief Executive (from 1<sup>st</sup> August 2000)  
The Stock Exchange of Hong Kong Limited

Mr Charles Barr  
Department of Justice

Mr E.T. O'Connell  
The Official Receiver

Mr Gordon W E Jones, JP  
The Registrar of Companies

Mr David T R Carse, JP  
Deputy Chief Executive  
The Hong Kong Monetary Authority

Miss Susie HO Shuk-yee  
Deputy Secretary for Financial Services

**Secretary** : Mr J S Bush

(iii)

### **Meetings held during 2000/2001**

One Hundred and Forty Eighth Meeting - 1<sup>st</sup> April 2000

One Hundred and Forty Ninth Meeting - 20<sup>th</sup> May 2000

One Hundred and Fiftieth Meeting	-	24 <sup>th</sup> June 2000
One Hundred and Fifty First Meeting	-	23 <sup>rd</sup> September 2000
One Hundred and Fifty Second Meeting	-	28 <sup>th</sup> October 2000
One Hundred and Fifty Third Meeting	-	9 <sup>th</sup> December 2000
One Hundred and Fifty Fourth Meeting	-	10 <sup>th</sup> February 2001

## **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 2000 to 31<sup>st</sup> March 2001, the SCCLR held 7 meetings. At the 148<sup>th</sup> meeting, members decided to form three sub-committees to study areas of corporate governance broadly categorised under the headings of Directors, Shareholders and Corporate Reporting for the purposes of the Overall Review of Corporate Governance in Hong Kong which it had been requested to conduct by the Financial Services Bureau. Members formulated suitable terms of reference, studied and discussed various research papers, and made recommendations on various subjects. From 1<sup>st</sup> April 2000 to 31<sup>st</sup> March 2001, the three sub-committees held 17 meetings. A Consultation Paper on proposals made in Phase I of the review was released for public comments on 20 July 2001.

In addition to their work on the Overall Review of Corporate Governance, members have considered a paper entitled “A consultation document on the Securities and Futures Bill” produced by the Financial Services Bureau and the Securities and Futures Commission. It also discussed the subjects of Part XI of the Companies Ordinance; companies incorporated outside Hong Kong; delegation of authority to amend schedules to the Companies Ordinance; financial

assistance by a company for the acquisition of its own shares; and no par value shares.

The SCCLR also endorsed proposals :-

- (a) to amend the Companies Ordinance to simplify filing requirements and facilitate electronic delivery, processing and keeping of information at the Companies Registry;
- (b) to amend the Companies Ordinance to facilitate electronic incorporation and change of name of a company;
- (c) to amend sections 83(2), 85, 86(1) and 87(2) of the Companies Ordinance regarding registration of charges and related documents;
- (d) to amend the Companies Ordinance to provide for a definition of “subsidiary undertakings” for the purposes of group accounts;
- (e) to amend section 165 of the Companies Ordinance to reform the law relating to indemnities for directors;
- (f) to amend the Companies Ordinance to enable listed companies to publish summary financial statements.

A brief summary of the 13 chapters of this Annual Report is set out in the following table :-

<b>Chapter</b>	<b>Subject Matter</b>	<b>Recommendations/Remarks</b>
1	Corporate Governance Review	Members agreed to form a Directors Sub-Committee, a Shareholders Sub-Committee and a Corporate Reporting Sub-Committee to undertake the Review.
2	Part XI of the Companies Ordinance – Companies Incorporated Outside Hong Kong	Members agreed that a working group be set up to undertake an overall review of Part XI of the Companies Ordinance.
3	Consultation Document on the Securities and Futures Bill	Members were invited to submit individual comments to the Financial Services Bureau.
4	Proposed Amendments to the Companies Ordinance to Simplify Filing Requirements and Facilitate Electronic Delivery, Processing and	Members endorsed proposals to make the necessary amendments.

<b>Chapter</b>	<b>Subject Matter</b>	<b>Recommendations/Remarks</b>
	Keeping of Information at the Companies Registry	
5	Proposed Amendments to the Companies Ordinance to Facilitate Electronic Incorporation and Change of Company Names	Members endorsed proposals to make the necessary amendments.
6	Proposed Amendments to the Companies Ordinance Regarding the Registration of Charges and Related Documents	Members endorsed proposals to amend sections 83(2), 85, 86(1) and 87(2) of the Companies Ordinance.
7	The Definition of “Subsidiary Undertakings” for the Purposes of Group Accounts	Members endorsed proposals to amend the Companies Ordinance to include a definition of subsidiary undertakings for the purposes of group accounts.
8	Delegation of Authority to Amend Schedules to the Companies Ordinance	Members deferred making a decision on this matter to a later date.
9	Indemnities for Directors	Members endorsed proposals to amend

<b>Chapter</b>	<b>Subject Matter</b>	<b>Recommendations/Remarks</b>
		section 165 of the Companies Ordinance to reform the law relating to indemnities for directors.
10	Summary Financial Statements	Members endorsed proposals to enable listed companies to send summary financial statements to their shareholders who opt to receive them in place of full annual reports.
11	Financial Assistance by a Company for the Acquisition of its Own Shares	Members requested further research on the working of recent legislation on this subject in Australia and New Zealand while awaiting the outcome of consultation on the matter in the United Kingdom.
12	No Par Value Shares	Members reconfirmed their view that the Companies Ordinance be amended to enable companies to opt for a system of no par value shares.
13	Companies Registry Annual Report 1999/2000	The Registrar of Companies briefed members on this Report.

## ***Chapter 1***

### **Corporate Governance Review**

- 1.1 At the 148<sup>th</sup> meeting, members considered a paper entitled “Corporate Governance Review” prepared by the Companies Registry which contained proposals on how the SCCLR could conduct its review of this subject. Members accepted that the study should be divided into three main areas namely: Shareholders, Directors and the Board, and Accountancy and Audit. The subject of corporate regulation would not be studied separately but would be studied as a part of each of these three subjects. Members agreed to set up and serve on three sub-committees, namely a Directors Sub-Committee (DSC), a Shareholders Sub-Committee (SSC) and an Audit and Accounting Sub-committee (later retitled to as the Corporate Reporting Sub-Committee (CRSC)). Members also agreed that other persons experienced in these three areas could be co-opted to serve on these sub-committees.
- 1.2 The three sub-committees asked for research work to be undertaken on a number of corporate governance related topics. These were as follows :-
- a survey on international institutional investors’ attitudes towards corporate governance standards in Hong Kong;
  - a survey on the corporate governance regimes in other jurisdictions;

- the roles and functions of audit, nomination and remuneration committees;
- an economic analysis correlating the performance of listed companies with their shareholders' profile;
- the company information flow and shareholders' rights of access to such information.

1.3 After further consideration, five consultancy briefs were prepared by the Financial Services Bureau and the Companies Registry and issued to five universities, namely the University of Hong Kong, the Chinese University of Hong Kong, the City University, the Hong Kong Polytechnic University and Baptist University, who had responded positively to earlier letters inviting expressions of interest. These universities submitted detailed proposals which were considered by an Assessment Panel comprising, inter alia, the Chairman of the SCCLR and the three Sub-Committee Chairmen with a view to awarding contracts with the selected universities in the course of 2001.

1.4 In parallel with the consultancies, since mid-2000, the three sub-committees have been considering papers on specific subjects, having regard to their terms of reference, which can be considered in advance of the results of the consultancy projects. It is possible that some of these subjects may have to be reconsidered in the light of the findings of the consultancy projects while a number of issues cannot be considered until the results of the consultancy projects are known.

1.5 The DSC considered papers on :-

- Directors' duties
- Voting by directors in relation to directors' self-dealing
- Shareholder approval for connected transactions of significance involving directors
- Transactions between directors or connected parties with an associated company
- Nomination and election of directors
- Role of the independent director

1.6 The SSC considered papers on :-

- Self-dealing by controlling shareholders
- Derivative action
- Unfair prejudice
- Personal rights of shareholders
- Orders for inspection
- Other powers of the court to assist shareholders
- The role of regulators
- The impact of dematerialization of shares

1.7 The CRSC considered papers on :-

- Filing of financial statements

- Management discussion and analysis
- Inconsistencies between the audited financial statements and other financial information contained in the directors' report and other sections of the annual report
- Accounting reference date
- Standards-setting process
- A body to investigate financial statements
- Quality of audit practice and monitoring of audit practice
- Revision of audited financial statements and related matters

1.8 The proposals of the three sub-committees made in Phase I of the Corporate Governance Review are contained in a Consultation Paper which was released for public consultation on 20 July 2001.

## ***Chapter 2***

### **Part XI of the Companies Ordinance – Companies Incorporated Outside Hong Kong**

- 2.1 At the 148<sup>th</sup> meeting, members agreed that a sub-committee, under the chairmanship of the Registrar of Companies, be set up to undertake an overall review of Part XI of the Companies Ordinance.

#### **Background**

- 2.2 The genesis of this review was a recommendation contained in the Consultancy Report on the Review of the Companies Ordinance. Recommendation 11.05 of the Consultancy Report which stated that the filing requirements for registration as a foreign company should be simplified. Recommendation 136 of the Report issued by the SCCLR on the recommendations made in the Consultancy Report later stated that Recommendation 11.05 of the Consultancy Report be referred to the Registrar of Companies without endorsement as to its specific contents for action, if necessary, in the ordinary course of business. In view of this, the Registrar of Companies considered that the SCCLR should be asked to advise specifically on the options of proceeding with amendments either on an ad-hoc basis or in the context of an overall review. At the 148<sup>th</sup> meeting, it was decided that a sub-committee under the

Chairmanship of the Registrar of Companies should be formed to undertake a comprehensive review of Part XI of the Companies Ordinance.

- 2.3 Between July 2000 and March 2001, the sub-committee held eight meetings, prior to preparing and submitting a report to the SCCLR. The contents of this report will be covered by the SCCLR' s next annual report.

## ***Chapter 3***

### **Consultation Document on the Securities and Futures Bill**

- 3.1 Members considered a consultation document on this subject and the Securities and Futures Bill.

#### **Background**

- 3.2 At the 149<sup>th</sup> and 150<sup>th</sup> meetings, members considered both the consultation document and the Securities and Futures Bill. In view of the increased workload of the Standing Committee as a result of the corporate governance review, it was not possible to form a working group to consider the detailed aspects of the consultation paper and the bill. In the circumstances, it was decided that, if members wished to submit individual opinions to the Secretary for Financial Services on either document, they could do so. However, if they wished any matter to be discussed by the Standing Committee, they could inform the Secretary so that a discussion could take place and the combined views of the Committee could be submitted to the Securities and Futures Commission.

## ***Chapter 4***

### **Proposed Amendments to the Companies Ordinance to Simplify Filing Requirements and Facilitate Electronic Delivery, Processing and Keeping of Information at the Companies Registry**

4.1 At the 150<sup>th</sup> meeting, members accepted proposals submitted by the Registrar of Companies to amend the Companies Ordinance to simplify filing requirements and facilitate electronic delivery, processing and keeping of information at the Companies Registry (CR).

#### **Background**

4.2 The CR aims to implement electronic filing, electronic processing and electronic searching as the key change drivers for computerizing its operations in order to offer a more speedy, inexpensive, user-friendly and high quality service for filing, processing and searching documents by late 2004. In October 1998, a Strategic Change Plan (SCP) study team was established in the CR to undertake an overall review of its current operation and procedures, assess the impact of the three key change drivers and examine the impact of document imaging on the operation.

- 4.3 In order to implement the SCP to attain the CR's objectives of improving service delivery, enhancing the qualities and timeliness of the information kept by the CR and establishing a fully automated registration and search system, it was necessary to make a large number of technical amendments to the Companies Ordinance which were discussed at the 148<sup>th</sup> and 150<sup>th</sup> meetings.
- 4.4 The Companies Ordinance contains numerous provisions requiring information to be delivered to the CR for registration and documents may be presented in specified forms, prescribed forms or in a non-standard format. In order to facilitate electronic filing, automated processing and capturing of data, and enable accurate and timely updating of the database for search, it will be necessary for information to be presented to the CR in a uniform and structured format. In view of this, it was proposed to amend section 2A of the Companies Ordinance requiring documents to be delivered in specified forms without any deviation.
- 4.5 In order to ensure the timely updating of information kept in the CR's computerized database and the filing of information in a standard format, the CR proposed to rationalize the filing requirements and introduce new specified forms. Receivers or liquidators would be required to report their change of addresses or resignation in specified forms. The CR also proposed to streamline filing requirements such as deleting the details of occupations or descriptions of members from the returns of allotment; reducing the time period for delivering a return of allotment from eight weeks

to one month; and removing the requirement for delivering a printed copy of the resolution together with the notice of increase of nominal capital.

4.6 The Companies Ordinance contains a number of provisions requiring statutory declarations or affidavits to be filed with the CR. Statutory declarations and affidavits are exempted under the Electronic Transactions Ordinance and cannot be submitted to the CR electronically. They also require multiple signatures which may provide obstacles to electronic submission. In order to facilitate electronic submission as well as electronic processing and data capturing, the CR proposed to streamline filing requirements by replacing statutory declarations or affidavits with written statements of confirmation in specified forms, and to reduce compliance costs by removing the need to make statutory declarations which are considered superfluous and onerous.

## ***Chapter 5***

### **Proposed Amendments to the Companies Ordinance to Facilitate Electronic Incorporation and Change of Company Names**

- 5.1 At the 149<sup>th</sup> meeting, members agreed to proposals submitted by the Registrar of Companies to amend the Companies Ordinance to facilitate electronic incorporation and change of name of a company.

#### **Background**

- 5.2 The SCP study team proposed that electronic filing and processing of applications for incorporation and the change of a company's name are feasible, subject to certain legislative and procedural amendments. Recommendation 21 of the SCCLR's Report on the Recommendations contained in the Consultancy Report on the Review of the Hong Kong Companies Ordinance proposed that the Memorandum and Articles of Association of a company be re-titled the constitution. The CR proposed to include in the Companies Ordinance model constitutions for adoption by various types of companies which can be registered under the Ordinance.
- 5.3 A specified form will be introduced as the application form to incorporate a company. The application form will contain vital information on the company such as the company

name, the liability of its members, etc., and a confirmatory statement of compliance to replace the statutory declaration of compliance currently required under section 18(2) of the Ordinance. A private company will not be required to submit its constitution to the Registrar if it adopts the new model constitution stipulated in Table A of the First Schedule to the Ordinance. The proposal aims to simplify the incorporation procedure, minimize the problem of transmitting a large file over the network and shorten both the processing time and the time spent on scrutinizing documents.

5.4 The CR also proposed to introduce a specified form to notify a change of the company's name and the printed copy of a special resolution filed with the Registrar pursuant to section 117(1) of the Ordinance will no longer be required.

5.5 Tables A, B, C, D and E of the First Schedule to the Companies Ordinance will need to be amended to provide for model versions of constitutions for different types of companies. Separate proposals to revise these tables will be submitted to the SCCLR in due course.

5.6 It should be noted that many statutory provisions of the Ordinance will need to be amended in order to refer to the constitution instead of the memorandum and articles.

## **Chapter 6**

### **Proposed Amendments to the Companies Ordinance**

#### **Regarding the Registration of Charges and Related Documents**

- 6.1 At the 152<sup>nd</sup> meeting, members approved proposals to amend sections 83(2), 85, 86(1) and 87(2) of the Companies Ordinance.

#### **Background**

- 6.2 At the 151<sup>st</sup> and the 152<sup>nd</sup> meetings, members considered proposals submitted by the Registrar of Companies to simplify the registration requirements, improve the efficiency of the registration system for charges, shorten the time for processing and registration, and improve the completeness of the public records. The proposals were as follows :-
- (a) To amend section 83(2) to allow the Registrar to issue a certificate of registration of charge generated by computer and remove the requirement to state the amount secured by a charge in the certificate. According to statistics, over 95% of charges registered under Part III of the Companies Ordinance were “all monies” charges securing variable and contingent sums of debt instead of specific amounts;

- (b) To expand the scope of section 85 to include the registration of memoranda of discharge in respect of the release from a charge of the whole of the property charged and cases where the whole of the property charged had ceased to form part of the undertaking of the company in addition to discharges in respect of full or partial satisfaction of a debt secured by a charge. The registration procedure would be streamlined by introducing a specified form for reporting discharges and removing the need to produce evidence of the discharge by requiring the chargee to give confirmation of the discharge in the specified form. Furthermore, the obsolete provision of furnishing the company with a copy of the memorandum of discharge upon request would also be removed;
  
- (c) To amend section 86(1) to allow the court to sanction the rectification of omissions or mis-statements in all types of memoranda of discharge; and
  
- (d) To amend section 87(2) as there was, currently, no provision in the section to require a receiver appointed by a court order to notify the Registrar when he ceased to act.

6.3 A proposal was made to amend sections 91(1) and 91(3) to limit the application of Part III of the Companies Ordinance to overseas companies registered under Part XI of the

Companies Ordinance. It was also proposed that special provisions be made to qualify the interpretation of “property in Hong Kong” to the effect that ships and aircraft would be deemed to be situated in the jurisdictions in which they were registered and that floating charges created by an oversea company registered under Part XI would be deemed to affect properties in Hong Kong. Members were unable to accept these proposals at this meeting and decided to ask the sub-committee established to examine Part XI of the Companies Ordinance to consider this matter and to report back to members on their findings.

## ***Chapter 7***

### **The Definition of “Subsidiary Undertakings” for the Purposes of Group Accounts**

- 7.1 At the 152<sup>nd</sup> meeting, members accepted proposals submitted by the Hong Kong Society of Accountants to adopt a definition of a “subsidiary undertaking” for the purposes of group accounts into the Companies Ordinance equivalent to that contained in the United Kingdom Companies Act 1985 and to amend the Banking and Insurance Ordinances where necessary.

#### **Background**

- 7.2 At the 151<sup>st</sup> and 152<sup>nd</sup> meetings, members discussed papers on this subject by the Hong Kong Society of Accountants (HKSA). The HKSA has, for many years, been developing Hong Kong accounting standards in line with International Accounting Standards (IAS). The International Accounting Standards Committee (IASC) has been working closely with the International Organization of Securities Commission (IOSCO) and IASC has now produced a full set of IAS which have been endorsed by IOSCO for listing purposes. IOSCO is encouraging its members to adopt these standards with the implication that, if a country, state or region is holding itself out to be an international financial centre, it will not be regarded as such unless it has adopted IAS.

7.3 The HKSA finds itself in a position where it cannot fully adopt IAS because the definition of the word “subsidiary” in the Companies Ordinance does not comply with that in the IAS. The initial proposal was to amend the word “subsidiary” in relation to group accounts in order to ensure a speedy resolution of this problem. Members were initially concerned that, whilst it was proper for Hong Kong to comply with IAS, it was necessary to ensure that the proposed amendments would not conflict with other sections of the Ordinance.

7.4 In the circumstances, it was decided that it would be preferable to adopt the United Kingdom Companies Act 1985’s definition of a “subsidiary undertaking” for the purposes of group accounts in order to avoid a conflict with the word “subsidiary” in other sections of the Companies Ordinance and the Banking and Insurance Ordinances. Members considered that, as the definition had been incorporated into the United Kingdom Companies Legislation in 1989 and had worked well for 11 years, it would be appropriate for it to be incorporated into the Companies Ordinance and the Insurance and Banking Ordinances so that Hong Kong accounting standards could comply with IAS.

## ***Chapter 8***

### **Delegation of Authority to Amend Schedules to the Companies Ordinance**

8.1 At the 153<sup>rd</sup> meeting, members considered the appropriate level of authority to whom the amendment of the schedules of the Companies Ordinance ought to be delegated but were unable to complete their discussion on the matter.

#### **Background**

8.2 Members considered a review undertaken by the Registrar of Companies of the statutory delegation of authority to amend the schedules to the Companies Ordinance. Sections of the Ordinance prescribe that amendment of schedules be effected by the Legislative Council, the Chief Executive in Council or the Financial Secretary. The trend in modern legislation is to prescribe the relevant policy secretary as the statutory authority for amending the more practical and technical aspects of schedules and subsidiary legislation, leaving matters of policy and principle in the hands of the Legislative Council or the Chief Executive in Council. In view of this, members discussed proposals to delegate the amendment of the more technical sections to relevant policy making secretaries. However, members were unable to agree on the appropriate level of delegation at this meeting and adjourned their deliberation of the matter to a later meeting of the SCCLR.

## ***Chapter 9***

### **Indemnities for Directors**

9.1 At the 153<sup>rd</sup> meeting, members approved proposals to amend section 165 of the Companies Ordinance to clarify that a company can indemnify its directors for liability incurred towards third parties in the course of a company's business provided those directors had acted in good faith. Indemnities are not to be provided for a director in respect of liability for a wrong done by a director to the company.

#### **Background**

9.2 Recommendation 75 of the Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance recommends that the Ordinance should confirm that the indemnities may be given to directors for liabilities incurred by them to others in the course of performing their duties and that the permissible scope of such indemnities should be studied further. A paper on this subject was produced and discussed by members at the 153<sup>rd</sup> meeting of the SCCLR. It was considered that the uncertainty over the right to indemnify a director may deter competent persons from accepting directorships and was therefore undesirable. As it stood, section 165 of the Companies Ordinance was not clear on the extent of an indemnity which a company

could give to its directors. The section ought to make it clear that the indemnity can be given only in respect of liability incurred towards third parties provided that the directors had acted in good faith. It was pointed out that it had been previously agreed that a company ought to be able to pay premiums for insurance cover for its directors for liability towards the company and others except in the case of fraud and that the Companies Ordinance would be amended to make this clear.

## ***Chapter 10***

### **Summary Financial Statements**

10.1 At the 153<sup>rd</sup> meeting, members accepted proposals submitted by the Securities and Futures Commission to enable listed companies to produce summary financial statements (now referred to as summary financial reports) which shareholders would have the option of receiving instead of the full annual report.

#### **Background**

10.2 The annual reports of listed companies can be very large documents, often comprising more than one hundred pages of which the audited financial statement may exceed fifty pages. Whilst this depth and complexity of information is of interest to sophisticated investors, it is of little benefit to the majority of retail investors. Furthermore, the length and complexity of this information may well discourage retail investors from trying to read the financial statement in an annual report.

10.3 In view of this, the Securities and Futures Commission proposed to adopt the legislative approach used in the United Kingdom where the basic authority to issue summary financial reports is included in the Companies Act and the detailed requirements in subsidiary legislation. Consequently, the Commission proposed that a new section be

included in the Companies Ordinance which would allow listed companies to send their shareholders a summary financial report instead of the full financial statement provided that they elected to receive such a summary financial report. However, a summary financial report would include :-

- a statement that the information is only a summary of the information in the audited financial statements and directors' report;
- an opinion from the company's auditors as to whether the summary financial reports are consistent with the audited financial statements;
- a statement on whether the auditor's report on the financial statements is qualified or modified and, if qualified or modified, contains the auditors' report in full together with sufficient information to understand the qualification or modification; and
- If appropriate, a statement that proper books of account have not been kept by the company or a statement that the auditor has failed to obtain all the information and explanations he thinks necessary for the purpose of the audit.

10.4 Members approved the introduction of summary financial reports subject to conditions

relating to the preservation and availability of full annual reports; the right of shareholders and the public to access these reports; and conditions concerning the option for receiving the full annual report being printed explicitly at the front of the summary financial reports.

## ***Chapter 11***

### **Financial Assistance by a Company for the Acquisition of its Own Shares**

- 11.1 At the 154<sup>th</sup> meeting, members suggested that research be carried out to find out how recent legislative changes in Australia and New Zealand regarding financial assistance by a company for the acquisition of its own shares had worked. Members also preferred to await the publication of the Final Report of the United Kingdom Company Law Review Steering Group before deciding whether to propose amendments to sections 47A to 48 of the Companies Ordinance.

#### **Background**

- 11.2 Members considered a paper, produced by the Registrar of Companies which pointed out that sections 47A to 48 contain a prohibition together with exceptions, restrictions and relaxations in respect of financial assistance being given by a company or its subsidiary for acquisition of its own shares. These sections are cumbersome and difficult to apply while they can prevent or, at least, make it extremely expensive to undertake, a bona-fide transaction which may well be in the concerned company or person's interest to pursue. Furthermore, they have not effectively prevented the

perceived mischief i.e. preventing the looting of a company by parties bidding for a company's control, as parties determined to circumvent the current prohibition can succeed in doing so.

- 11.3 In view of this, recommendation 4.08 of the Consultants' Report on the Overall Review of the Companies Ordinance stated that "the provisions with respect to "financial assistance" for the purchase of a company's own shares should be eliminated." Subsequently, paragraph 9.92 of the Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance stated :-

".....the rationale of the provisions is to prevent looting of a company by bidders. The primary concern is for minority shareholders who remain in the company after a successful takeover. Companies that are targets of such bids are usually rich in liquid assets; creditor concerns are generally subsidiary. One solution which is consistent with the de-regulation trend would be to subject such transactions to the approval of those shareholders, with the existing controlling shareholders barred from voting."

- 11.4 Members noted that the problem had been addressed in legislative changes made in Australia and New Zealand which require a non-interested or unanimous shareholder approval for the transaction. Before reaching a decision, members therefore wished to

find out how the new legislation was working in Australia and New Zealand and also thought it appropriate to await the publication of the views on this subject of the Company Law Review Steering Group in the United Kingdom.

## ***Chapter 12***

### **No Par Value Shares**

12.1 At the 154<sup>th</sup> meeting, members favoured continuing with an earlier recommendation that company law should permit no par value shares for all companies on an optional basis but that this was not a priority issue and should be dealt with in Phase IV of the proposed revision of the Companies Ordinance.

#### **Background**

12.2 At the 154<sup>th</sup> meeting, members considered an earlier recommendation made at the 142<sup>nd</sup> meeting of the SCCLR on 11<sup>th</sup> September 1999 that companies should be given an option to convert to a no par value system of shareholding. The introduction of no par value shares on an optional basis would effectively necessitate a fundamental restructuring and rewriting of a substantial part of Part II of the Companies Ordinance regarding share capital and debentures in order to accommodate one regime for companies with par value shares and another regime for companies with no par value shares. This would be a very major undertaking given the existing somewhat disorganized and inchoate structure of Part II.

12.3 It was, however, for consideration whether such a major exercise would be justified

given that:-

- (a) While par value shares are anachronistic, it is understood that they do not cause any major problems in practice as they are well understood by retail share purchasers;
  
- (b) One of the major difficulties regarding par value shares would fall away when the SCCLR's recommendation that court approval for reduction of capital would not be required for the redesignation of par value to a lower amount in certain specified circumstances is implemented by means of legislative amendments;
  
- (c) Recommendation 12 of the Report of the Standing Committee on Company Law on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance stated that "company law should aim to eliminate unnecessary complication";
  
- (d) The United Kingdom's Company Law Review Steering Group had changed its position on no par value shares and proposed in the light of public consultation and the restrictions imposed by recent European Economic Community directives to retain par value shares for all companies both public and private.

12.4 Members considered all the above factors but came to the conclusion that it was preferable to have legislation which enabled companies to make their own decision as to which system of shareholding they wished to adopt. However, given the factors outlined in paragraph 12.2 (above), such a change could only take place in the context of the final stage of implementing the SCCLR's recommendations on the Overall Review of the Companies Ordinance which involve restructuring and re-writing the whole Ordinance. Furthermore, before resources are committed to such a major undertaking, it is clearly necessary to determine whether or not such an exercise would be worthwhile having regard to the accounting, market and taxation implications of introducing no par value shares on an optional basis. In view of this, it is considered necessary to undertake a study to determine the impact of permitting no par value shares on an optional basis on Hong Kong's financial and capital markets before a firm decision is reached on which course of action to adopt. The study should also consider whether such a change should be optional or mandatory.

## ***Chapter 13***

### **Companies Registry Annual Report 1999/2000**

13.1 At the 152nd meeting, the Companies Registry Annual Report was tabled for discussion.

The workload statistics disclosed that, compared with the previous financial year, there had been an increase of 19.0% and 28.8% in the number of incorporations of public and private companies respectively. The number of overseas companies registering under Part XI of the Companies Ordinance had increased by 16.6%.

13.2 In September 2000, the Companies Registry On-line Public Search System (CROPS) was launched for searching key company information online. CROPS is an integrated bilingual system through which customers can conduct searches online in English or Chinese. The search services made available include company name search, document index search, company particulars search, directors' index search, disqualification orders search and an ordering microfiche facility.