



CO Rewrite

Rewrite of the Companies Ordinance

Consultation Paper Highlights

**Draft Companies Bill
Second Phase Consultation**

May 2010

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.

Draft Companies Bill Consultation

We have prepared draft clauses of the Companies Bill ("CB") for consultation in two phases. With the completion of the first phase consultation covering about half of the CB on 16 March 2010, we are now consulting on the remaining Parts, covering Parts 1, 3 to 9, 13, 19 and 20.

Major proposals

The key legislative changes in this second phase consultation includes :

Enhancing Corporate Governance

- Improving 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 (Part 9);
- Strengthening auditors' rights to obtain information for performing their duties (Part 9).

Ensuring Better Regulations

- Removing disclosure requirements in the Tenth and Eleventh Schedules of the CO that duplicate with financial reporting standards (Part 9);
- Streamlining and updating the regime of registration of charges (Part 8);
- Giving the Registrar of Companies ("Registrar") powers to obtain documents, records and information for the enforcement of certain provisions (Part 19);
- Updating the provisions on company investigations (Part 19);
- Empowering the Registrar to compound specified offences (Part 20).

Business Facilitation

- Allowing more private companies and small guarantee companies to take advantage of simplified accounting and reporting requirements so as to save their compliance and business costs (Part 9);
- Introducing an alternative court-free procedure for the reduction of share capital based on a solvency test (Part 5);
- Allowing all companies to purchase their own shares out of capital subject to a solvency test (Part 5);
- Streamlining the financial assistance provisions (Part 5) (We are inviting comments on whether the financial assistance rules should be further streamlined);
- Introducing a court-free statutory amalgamation procedure for wholly-owned intra-group companies (Part 13);
- Making the keeping and use of a common seal optional (Part 3).

Modernising the Law

- Abolishing the par value regime and adopting a mandatory system of no-par for all companies with a share capital (Part 4);
- Removing the requirement for authorised capital (Part 4).

Issues Highlighted for Consultation

We welcome public views on all draft clauses of the CB contained in this second phase consultation. There are several issues which we would like to highlight in particular for consultation –

- We have attempted to streamline the rules on a company giving financial assistance for the purpose of acquiring its own shares in a manner similar to the New Zealand Companies Act, but this does not completely address the issue of the provisions being “a trap for the unwary”, particularly for private companies. We therefore propose to revisit the option of abolishing the financial assistance rules for private companies.
- We propose to drop the proposal for the CB to provide for the preparation of a directors’ remuneration report in addition to the annual accounts, because improvements to the disclosure of the remuneration of directors of listed companies is better pursued through amendments to the Listing Rules and/or the Securities and Futures Ordinance, and that the requirements would be too onerous for private companies.
- We propose some minor changes to the provisions concerning the Financial Secretary’s powers to investigate or enquire into a company’s affairs, as well as new provisions empowering the Registrar to obtain documents, records and information in certain circumstances.
- We would like to seek views on whether a company should be required to give reasons explaining its refusal to register a transfer of shares.

We Welcome Your Views

The consultation paper and the relevant draft Parts of the CB are available at www.fstb.gov.hk/fsb/co_rewrite (“CO Rewrite webpage”) 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 6 August 2010**.

A public consultation forum will be held on 22 June 2010. Details are available at the CO Rewrite webpage.

Future Work

We will refine the CB in the light of public comments received and aim to introduce the CB into the Legislative Council by the end of 2010.

For enquiry, please call 2528 9156 or email co_rewrite@fstb.gov.hk