

Press release

LCQ9: Public consultation on draft bills conducted by Government

Wednesday, January 30, 2013

Following is a question by the Hon Ronny Tong and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (January 30):

Question:

This Council enacted the new Companies Ordinance in July last year, with the commencement date to be announced. The Ordinance will impose new restrictions on inspection by the public of information such as the usual residential addresses and full identification numbers of persons such as company directors or company secretaries. According to the conclusions of the first phase consultation on the draft bill concerned, which was conducted by the Government between December 2009 and March 2010, a majority of the respondents supported the imposition of such restrictions. However, some members of the public and the media have recently indicated that they did not know that the Government had conducted the aforesaid consultation exercise, and the Government did not consult the general public as well as media practitioners and organisations on this matter. In this connection, will the Government inform this Council:

(a) of the approach and targets of the aforesaid consultation (with a detailed list of the names of individuals and organisations consulted as well as the means by which the Government had contacted them); apart from uploading the consultation paper onto the designated web site, whether the Government had announced and publicised that it was conducting public consultation on the imposition of the aforesaid restrictions on inspection of information; if it had, of the details (including the relevant dates and the types of media through which the announcements were made and publicity was launched); if not, the reasons for that; as some members of the media industry have pointed out that for a number of previous news reports involving significant public interests, they had obtained the leads through inspecting the names and identity card numbers of the directors of certain companies, and that the aforesaid restrictions will affect the work of the media, of the reasons why the Government did not consult the media practitioners and organisations;

(b) of the criteria for deciding the approaches and targets when the Government conducts consultation exercises on draft bills, and how it determines which

organisations should undertake the tasks of conducting the consultation exercises and analysing the outcome; the number and details of such type of consultation exercises conducted by the Government in the past five years; whether it had openly reported to the public on the outcome and analyses of such consultation exercises; if it had, of the dates of the announcements and the means for reporting the outcome; if not, the reasons for that; and

(c) how the Government ensures that all relevant stakeholders will be consulted and the public are aware that the Government is conducting consultation exercises on draft bills; how the authorities will more effectively publicise the views collected and the relevant details as well as make such information available for public inspection after conducting any public consultation exercise in future; whether the Government will undertake to provide expeditiously all the information on the outcomes, analyses and related data of consultation exercises to the relevant bills committees of this Council for consideration, when it conducts public consultation exercises in future which may impact on the legislative work of the Legislative Council; if it will, of the details; if not, the reasons for that?

Reply:

President,

The question raised by Hon Tong touches on matters under different policy bureaux. The Administration's consolidated reply is as follows:

(a) In the course of drafting the Companies Bill (CB), the Financial Services and the Treasury Bureau (FSTB) conducted three topical consultations between March 2007 and September 2008 to gauge views on a number of subjects such as company names, share capital and accounts and audit. Subsequently, we prepared a draft CB for public consultation in two phases between December 2009 and August 2010. All of the five consultations were targeted at the public. For each round of consultation, a consultation paper setting out key issues and questions for consultation was issued and public consultation forums were held. After the end of the consultation period, consultation conclusions containing our analysis of and responses to public views were published. The consultation papers, consultation conclusions and the compendiums of submissions or the public responses received are all available on FSTB's website. On publicity, for each time we published a consultation paper or consultation conclusions, a press release was also issued to inform the public of the same. The Legislative Council (LegCo) Panel on Financial Affairs was consulted or briefed on the progress of work on a

number of occasions at different stages of the rewrite exercise. Relevant details of the five public consultations are at the Annex.

We issued the "Consultation Paper on Draft Companies Bill - First Phase Consultation" on December 17, 2009 for a three-month public consultation. As regards the issue of inspection of the usual residential addresses and full identification numbers of persons such as directors or company secretaries, in light of the concern over privacy protection and the experience of other countries which have amended their relevant laws, and taking into account the view expressed during the drafting of the CB that the public should be consulted on the issue, we dedicated a separate chapter (Chapter 7) in the Consultation Paper to discuss this issue and specifically sought views on whether the residential addresses and full identification numbers of directors and company secretaries should continue to be made available for public inspection. We also asked the public that if their answers to the question were in the negative, whether the approach in the United Kingdom or that in Australia in that regard should be adopted. On the first day of the consultation period, we invited the media to a press briefing on the relevant details and noted that there was media coverage about the issue afterwards. On January 4, 2010, we attended a meeting of the LegCo Panel on Financial Affairs to consult its Members. On February 4, 2010, we held a public consultation forum for the first phase consultation on the draft CB. Between January and March 2010, we also attended meetings organised by various professional bodies and stakeholders on the Bill. At the aforesaid public consultation forum, LegCo meeting and other meetings, and in all the relevant papers and publications, we had set out the key issues for consultation, including whether the residential addresses and full identification numbers of directors and company secretaries should continue to be made available for public inspection.

On August 30, 2010, we published the consultation conclusions for the above consultation, giving a detailed account of the views received. A press release on the consultation conclusions was issued on the same day. On November 1, 2010, we attended another meeting of the LegCo Panel on Financial Affairs to brief Members on the consultation conclusions, including those in respect of the proposal of restricting access to the residential addresses and full identification numbers of persons such as directors or company secretaries on the Companies Register.

Thereafter, during the scrutiny of the CB by the Bills Committee formed by LegCo, we presented papers to the Bills Committee on the outcomes of the public consultation and the proposals in the Bill. The issue was discussed at seven meetings held by the Bills Committee between April 2011 and May 2012 and all were open meetings. In the course of discussions, we reached a consensus with the Bills

Committee that after enactment of the Bill, the relevant subsidiary legislation will specify, among others, members of the relevant companies, public officers (including law enforcement agencies and the Labour Department) and liquidators as persons who may apply to the Companies Registry for inspecting the residential addresses and full identification numbers of persons such as directors or company secretaries. There is clear record of the discussions, including the details of the proposals, Members' views and our responses in the report of the Bills Committee which was tabled at the LegCo meeting on June 27, 2012.

(b) When conducting public consultation for proposed Bills, the Government will mainly take into account the purpose of consultation, the nature of the subject and resources available in order to determine the means and targets of public consultation, and which organisation should be tasked to conduct the consultation and analyse the results. Within the time available for replying this question, we have gathered information from bureaux and departments that in the past five years from 2008 to 2012, the Government has issued 45 public consultation documents for proposed Bills. Bureaux and departments have adopted suitable means for consultation (e.g. through public consultation sessions), announced the consultation results (e.g. through press conference) and taken into account the relevant analyses in the drafting and legislative process of the Bills.

(c) It is the Government's declared policy to be, as far as possible, open and transparent, and to be accountable to the public. It is also essential for the Administration to take public opinion into account when formulating policies and programmes. Accordingly, when conducting a public consultation exercise, bureaux and departments would set the scope of consultation as wide as possible in order to enable the Government to listen to the views of various sectors of the community. Bureaux and departments would also establish the practice that the public be informed of the results of consultation exercises.

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