

EXECUTIVE SUMMARY

1. The FSTB launched a comprehensive rewrite of the CO in mid-2006. Public consultation on proposals to reform the accounting and auditing provisions of the CO was conducted in the second quarter of 2007. The consultation conclusions have been issued recently. The final proposals will be incorporated into a White Bill to be issued around mid-2009 for further public consultation.
2. The present consultation covers the following issues:

Company names (Chapter 2)

- (a) To tackle possible abuses of the company name registration regime by “shadow companies”, we propose empowering the Registrar of Companies (“Registrar”) to act on a court order directing a defendant company to change its infringing name, and substitute its infringing name with its registration number if the company fails to comply with the Registrar’s direction to change its name;
- (b) We propose that the Registrar may have a discretionary power to approve the registration of a hybrid company name comprising both Chinese characters and English alphabets or words where the applicant can show to the satisfaction of the Registrar that there is a genuine business need;

Directors’ duties (Chapter 3)

- (c) We seek public views on whether the directors’ general duties which are mainly found in case law should be codified to make them more accessible to the public. We would like to hear views on whether the UK approach should be followed. The UK has included a duty for directors to promote the success of the company having regard to a wider list of factors, such as the interests of employees, and the impact of the company’s operations on the community and the environment;

Corporate directorship (Chapter 4)

- (d) We propose that corporate directorship be abolished or restricted so as to improve the accountability and transparency of company

operations and the enforceability of directors' obligations. The option favoured by the SCCLR is to abolish corporate directorship altogether, subject to a reasonable grace period. An alternative is to follow the UK approach which requires that every company must have at least one director who is a natural person so that someone may, if necessary, be held accountable for the company's actions;

Registration of charges (Chapter 5)

- (e) We propose that the list of registrable charges be updated by including charges on aircrafts and interests in them and deleting or amending certain duplicated or obsolete items, such as the requirement to register charges securing the issue of debentures, and references to "bills of sale";
 - (f) We propose that the procedure of registration of charges be improved by making the instrument of charge available in full on the public register and by shortening the registration period from five weeks to 21 days so as to reduce the period whereby the charge is "invisible" to third parties; and
 - (g) We also invite initial views on whether there is any need to introduce an administrative mechanism for late registration of charges to replace the current system of applying to the court.
3. The Government will carefully study the comments received during this consultation before taking a final view on the proposals. Other issues, such as share capital, capital maintenance rules and statutory amalgamation procedures will be covered in another public consultation paper to be issued in mid-2008. The final proposals will be incorporated into the White Bill for further public consultation around mid-2009. We plan to introduce the Companies Bill into the Legislative Council, tentatively, in the third quarter of 2010.