



CO Rewrite

Rewrite of the Companies Ordinance

Consultation Paper - Executive Summary

Share Capital
The Capital Maintenance Regime
Statutory Amalgamation Procedure

Consultation Paper - Executive Summary

The Financial Services and the Treasury Bureau launched a comprehensive rewrite of the Companies Ordinance (“CO”) in mid-2006. Two public consultations covering the accounting and auditing provisions of the CO as well as company names, directors’ duties, corporate directorship and registration of charges have already been conducted. More information on the rewrite exercise and past consultations can be found at our website: www.fstb.gov.hk/fsb/co_rewrite.

The present consultation covers the following issues:

Share Capital

- (a) To introduce a mandatory no-par value share regime for all companies and provide a period of 12 months for companies to review their arrangements before migration to no-par. We do not propose to introduce any legislative control over the setting of issue price of no-par shares but directors will still have an overriding fiduciary duty to set that in good faith;
- (b) To seek public views on whether the merger and reconstruction reliefs should be retained, and if so, its formulation;
- (c) To allow the capitalisation of profits with or without an issue of shares and the issuance of bonus shares without the need to transfer an amount to the share capital account. To continue to allow companies to consolidate and subdivide shares and to provide for redeemable shares;
- (d) To remove the requirement for authorised capital but give companies a choice whether to retain or delete the provision for authorised capital in their Articles of Association;
- (e) To retain the option of having partly paid shares;

The Capital Maintenance Regime

- (f) To seek public views on whether they agree with the SCCLR’s recommendations that –
 - (i) Hong Kong should not replace the current capital maintenance regime with the solvency test approach to distributions of all forms; and
 - (ii) As far as reduction of capital is concerned, there is no need to introduce a court-free procedure based on solvency as an alternative to the current court-sanctioned procedure;
- (g) To seek public views on whether the existing rules on buy-backs and financial assistance should be streamlined and modified, and if so, what option should be adopted; and

Statutory Amalgamation Procedure

(h) To consider introducing a court-free statutory amalgamation procedure in Hong Kong, in addition to the existing court-sanctioned procedure, along the lines of the Singaporean model with some modifications. The proposed court-free procedure will contain a number of measures to protect the interests of relevant stakeholders.

The Government will carefully study the comments received during this consultation before taking a final view on the proposals.

The final proposals for this and previous rounds of public consultation will be incorporated into the draft 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.

Consultation Paper

The consultation paper can be downloaded from <http://www.fstb.gov.hk/fsb>

Please send your comments to us on or before 30 September 2008:

Mail : Companies Bill Team, Financial Services and the Treasury Bureau,
15/F Queensway Government Offices, 66 Queensway, Hong Kong

Fax : (852) 2869 4195

Email : co_rewrite@fstb.gov.hk

For enquiry, please call (852) 2528 9156