
Reply Form for the Draft Companies Bill – First Phase Consultation

1. The purpose of this reply form is to facilitate providing views and comments on the Consultation Paper entitled Draft Companies Bill – First Phase Consultation (“Consultation Paper”) published by the Financial Services and the Treasury Bureau (“FSTB”) on 17 December 2009.
2. The Consultation Paper can be downloaded from the FSTB’s website at <http://www.fstb.gov.hk/fsb>.
3. If you have any views or comments on the Consultation Paper, you are welcome to complete this reply form and return it to us on or before **16 March 2010** by one of the following means:

By mail or
hand delivery to: Companies Bill Team
 Financial Services and the Treasury Bureau
 15/F, Queensway Government Offices
 66 Queensway
 Hong Kong

Re: **Consultation Paper on
Draft Companies Bill –
First Phase Consultation**

By fax to: (852) 2869 4195

By e-mail to: co_rewrite@fstb.gov.hk

4. Any questions about this reply form may be addressed to Miss Sandy CHAN, Executive Assistant (Companies Bill Team), who can be reached at (852) 2867 5844 (phone), (852) 2869 4195 (fax) or co_rewrite@fstb.gov.hk (email).
5. Submissions will be received on the basis that we may freely reproduce and publish them, in whole or in part, in any form, and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgment of the party making the proposal.

6. Please note that names of respondents, their affiliation(s) and comments may be posted on the FSTB's website or referred to in other documents we publish. If you do not wish your name and/or affiliation to be disclosed, please state so when making your submission. Any personal data submitted will only be used for purposes which are directly related to consultation purposes under this consultation paper. Such data may be transferred to other Government departments/agencies for the same purposes. For access to or correction of personal data contained in your submission, please contact Mr Arsene YIU, Assistant Secretary for Financial Services and the Treasury (Financial Services), who can be reached at (852) 2528 9077 (phone), (852) 2869 4195 (fax), or arseneyiu@fstb.gov.hk (email).

PART A: GENERAL INFORMATION OF THE RESPONDENT

Name/Name of Organisation	:	_____
If organisation, name and title of Contact Person	:	_____
		<i>(Please fill in if the respondent is a company or organization)</i>
Phone Number	:	_____
E-mail Address	:	_____

If you do not wish to disclose your affiliation or name to the public, please check the box here:

Our organisation does not wish to disclose our name.

I do not wish to disclose my name.

PART B: DETAILED QUESTIONS FOR RESPONSE

You may provide your views or comments on all or any of the questions. If the provided space is insufficient, please attach additional pages.

Question 1

In respect of members' schemes of listed companies, which of the following options do you prefer? Please explain the reasons.

Option 1: retain the headcount test; *[Please proceed to Question 4]*

Option 2: retain the headcount test but give the court a discretion to dispense with the test; or *[Please proceed to Question 3]*

Option 3: abolish the headcount test. *[Please proceed to Question 2]*

Question 2

- (a) If your answer to Question 1 is Option 3, do you think that the headcount test should also be abolished in respect of members' schemes of non-listed companies?
- (b) If your answer to (a) is yes, do you think that some form of additional protection should be provided for small shareholders? If so, what should such protection be?

Question 3

If your answer to Question 1 is Option 2 or Option 3, do you think that the same approach should apply to creditors' scheme?

Question 4

- (a) Do you agree that directors' residential address should continue be made available for inspection on the public register?
- (b) If your answer to (a) is in the negative, do you think that either:
- (i) the Australian approach (paragraphs 7.8 and 7.9); or
 - (ii) the UKCA 2006 approach (paragraph 7.10(b)) should be adopted?
- (c) If you consider that either the Australian or the UKCA 2006 approaches should be adopted, do you have any suggestions on how to tackle the practical problems highlighted in paragraph 7.13(c) to (e) above?

Question 5

(a) Do you think that there is a need to mask certain digits from the identification numbers of new records of directors and company secretaries on the public register?

(b) If your answer to (a) is yes, do you have any views on how to deal with personal identification numbers on existing records?

Question 6

On the assumption that a new disinterested members' approval exception to prohibitions on loan and similar transactions in favour of directors and their connected persons will be introduced in respect of public companies, which of the following options do you prefer?

Option 1: "relevant private companies" as defined in section 157H(10) of the CO should continue to be subject to more stringent regulations similar to public companies (including restrictions relating to quasi-loans and credit transactions, restrictions relating to connected persons and disinterested members' approval requirement);

Option 2: extending the concept of "relevant private company" to cover companies associated with non-listed public companies;

Option 3: modifying the concept of "relevant private company" by disapplying it to private companies having a common holding company with a listed/public company;

Option 4: modifying the concept of "relevant private company" to cover only private companies which are subsidiaries of a listed/public company; or

Option 5: abolishing the concept of "relevant private companies" , i.e. all private companies should be subject to the same treatment.

Any other option (please elaborate)?

Question 7

Do you consider that the common law derivative action currently preserved in section 168BC(4) of the CO should be abolished in the CB?

Comment on Draft Clauses

Clause No.	Comment

- End -