

EXECUTIVE SUMMARY

1. In mid-2006, the Government launched a major and comprehensive exercise to rewrite the CO. By updating and modernising the CO, we aim to make it more user-friendly and facilitate the conduct of business to enhance Hong Kong's competitiveness and attractiveness as a major international business and financial centre.
2. We conducted three public consultations in 2007 and 2008 to gauge views on a number of complex subjects. Taking into account the views received, we have prepared draft clauses of the CB for further consultation in two phases. The first phase consultation, covering Parts 1, 2, 10 to 12 and 14 to 18 of the CB, was conducted from 17 December 2009 to 16 March 2010. This current second phase consultation covers the remaining Parts, namely Parts 3 to 9, 13, 19 and 20*.
3. This paper will:
 - (a) highlight several issues for consultation; and
 - (b) contain explanatory notes on the relevant draft Parts.

Issues Highlighted for Consultation

4. While we welcome public views on all draft clauses of the CB contained in this second phase consultation, there are several specific issues which we would like to highlight in particular for consultation:
 - (a) we have attempted to streamline the rules on giving financial assistance by a company for the purpose of acquiring its own shares in a manner similar to the NZCA. The details are set out in Division 5 of Part 5 of the CB. However, the New Zealand model 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 (*Chapter 2*);
 - (b) we propose to drop the proposal to impose a requirement for all listed companies and unlisted companies where members holding not less than 5% of voting rights have so requested to prepare separate directors' remuneration reports along the lines of those prepared under the UKCA 2006. The main concerns are (a) improvements to the

* A revised Part 1 with some added and revised definitions is also included in the Consultation Draft.

disclosure of the remuneration of directors of listed companies is better pursued through amendments to the Listing Rules and/or the SFO and (b) the requirements on directors' remuneration reports are designed primarily for listed companies and would be too onerous for private companies (*Chapter 3*);

- (c) we propose some minor changes to the provisions concerning the investigation of a company's affairs and enquiry into a company's affairs that may be exercised by the FS, as well as new provisions empowering the Registrar to obtain documents, records and information in certain circumstances (*Chapter 4*); and
- (d) 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 (*Chapter 5*).

Future Work

- 5. This consultation will last until 6 August 2010. We will refine the CB in the light of public comments received and introduce the CB into LegCo by the end of 2010.