

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 covers Parts 1, 2, 10 to 12 and 14 to 18 of the CB. The second phase consultation, due to be launched in the first quarter of 2010, will cover Parts 3 to 9, 13 and 19 to 20. This paper will:
 - (a) outline the key legislative changes proposed in the CB;
 - (b) highlight several issues for consultation; and
 - (c) contain explanatory notes on the relevant draft Parts.

Enhancing Corporate Governance (*Chapter 2*)

3. To enhance transparency and accountability with companies' operations, as well as to provide greater opportunity for all shareholders to engage in company business in an informed way, we will codify the standard of directors' duty of care, skill and diligence; restrict the appointment of corporate directors; improve disclosure of company information; strengthen auditors' rights; enhance shareholders' engagement in the decision-making process and foster shareholder protection in the CB.

Ensuring Better Regulations (*Chapter 3*)

4. To ensure that the regulatory regime is effective and business-friendly, we propose to introduce in the CB a number of improvements to the company incorporation and name registration procedures, the filing of information and the registration of charges. Many of these will focus on encouraging and exploiting new forms of e-communication. We will also empower the Registrar to take action on "shadow companies" and to obtain more information from companies so as to enhance enforcement of the law.

Business Facilitation (*Chapter 4*)

5. We will allow SMEs to take advantage of simplified accounting and reporting requirements, thereby saving their compliance and business costs. We will also facilitate companies to dispense with AGMs by unanimous members' consent, and simplify some of the complex rules prescribed in the CO, such as the capital maintenance rules. In addition, we will introduce cheaper and less time-consuming alternatives to court procedures to deal with more straight-forward cases, such as a statutory amalgamation procedure for wholly-owned intra-group companies.

Modernising the Law (*Chapter 5*)

6. We will update provisions in the CO which are based on old concepts that no longer meet the needs of modern business, such as the assumption of paper-based communications between a company and its members. We will also retire some antiquated concepts that no longer serve any useful purposes (such as par value of shares), modernise the language and rearrange the sequence of some of the provisions in a more logical and user-friendly order. In addition, technical changes are proposed to provide for the enabling framework for scripless securities trading.

Issues Highlighted for Consultation

7. While we welcome public views on all draft clauses of the CB, there are several specific issues which we would like to highlight for consultation:
 - (a) whether the "headcount test" for approving a scheme of compromise or arrangement should be retained or abolished (*Chapter 6*);
 - (b) whether residential addresses of directors and identification numbers of directors and company secretaries should continue to be disclosed on public register (*Chapter 7*);
 - (c) whether private companies associated with a listed or public company should be subject to more stringent regulations similar to public companies for the purposes of the provisions on fair dealings by directors (*Chapter 8*); and
 - (d) whether the common law derivative action should be abolished (*Chapter 9*).

Future Work

8. This consultation will last until 16 March 2010. A second phase consultation covering the other draft Parts of the CB will be launched in early 2010. We aim to issue the conclusions of these two phases of consultation in the second and third quarter of 2010 respectively. We will refine the CB in the light of the public comments received and introduce the CB into the LegCo by the end of 2010.