Rewrite of the Companies Ordinance

Second Phase Consultation on the Draft Companies Bill

Consultation Conclusions

BACKGROUND

1. In mid-2006, the Government launched a major and comprehensive exercise to rewrite the Companies Ordinance (Cap. 32) (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. Taking into account views collected during previous public consultation exercises in 2007 and 2008, we prepared a draft Companies Bill (CB) for further consultation. The First Phase Consultation covering ten Parts (namely, Parts 1 to 2, 10 to 12 and 14 to 18) of the CB was conducted between 17 December 2009 and 16 March 2010. The First Phase Consultation Conclusions were released on 30 August 2010 and are available on the dedicated CO Rewrite website (http://www.fstb.gov.hk/fsb/co_rewrite/) of the Financial Services and the Treasury Bureau (FSTB), together with the responses received and other relevant materials.

3. We will proceed to introduce a number of proposals in the CB after the First Phase Consultation. In particular, there are a number of measures to enhance corporate governance. For example:-

   (a) codifying the standard of directors' duty of care, skill and diligence with a view to clarifying the duty under the law and providing guidance to directors;

   (b) enhancing shareholders' engagement in the decision-making process, such as reducing the threshold requirement for

shareholders to demand a poll from 10% to 5% of the total voting rights; and

(c) fostering shareholder protection, such as introducing more effective rules to deal with directors' conflicts of interest.

4. This Second Phase Consultation covering the remaining parts of the CB (namely, Parts 3 to 9, 13 and 19 to 20) was launched on 7 May 2010 and ended on 6 August 2010. Apart from seeking views on the draft provisions, the consultation document also highlighted several issues for consultation, including the following:-

(a) whether the restrictions on financial assistance should be abolished for private companies (*Question 1(a) and (c) of the consultation document*); and if in the affirmative, how to regulate listed and unlisted public companies (*Question1(b)*);

(b) whether the CB should not impose a requirement of preparing separate directors' remuneration reports on all listed companies incorporated in Hong Kong; and unlisted companies incorporated in Hong Kong where members holding not less than 5% of voting rights have so requested (*Question 2*);

(c) whether the proposed changes to the provisions concerning the investigation of and enquiry into a company's affairs that may be exercised by the Financial Secretary (FS) are acceptable (*Question 3*);

(d) whether the proposed new powers for the Registrar of Companies (the Registrar) to obtain documents, records and information are acceptable (*Question 4*); and

(e) whether the CB should make it obligatory for a company to give reasons explaining its refusal to register a transfer of shares (*Question 5(a)*); and if in the affirmative, the manner of giving the reasons (*Question 5(b)*).

5. The consultation document and the draft clauses were widely circulated to various stakeholders, including relevant professional bodies, business organisations, market practitioners, chambers of commerce, financial regulators, academics, etc. They were posted on the CO Rewrite website and hard copies were made available to the general public at a number of Government offices.

6. During the consultation period, we briefed the Legislative Council Panel on Financial Affairs on the Second Phase Consultation document and proposals on 7 June 2010 and held a public consultative forum on 22 June 2010. We attended ten meetings and forums convened by other interested organisations to brief the participants on the proposals and listen to their views. A list of the meetings and forums we attended is at Appendix I. We have also consulted the Standing Committee on Company Law Reform (SCCLR) and have incorporated their views into this Consultation Conclusions as appropriate.

OUTCOME OF CONSULTATION

7. The Second Phase Consultation period ended on 6 August 2010, during which we received a total of 59 submissions (among which 26 were from business and professional organisations including the Hong Kong Association of Banks (HKAB), Hong Kong General Chamber of Commerce (HKGCC), Hong Kong Institute of Certified Public Accountants (HKICPA), Hong Kong Institute of Chartered Secretaries (HKICS), Hong Kong Institute of Directors (HKIoD), Law Society of Hong Kong (LSHK), etc.; 23 from companies/law firms/accounting firms; and ten from individuals). Other than the above issues (in paragraph 4 above) highlighted for consultation, the proposals in Part 9 (Accounts and Audit) also attracted considerable feedback.

8. A list of the respondents is at Appendix II. A compendium of the submissions is also available at the FSTB's CO Rewrite website. The respondents' comments and our responses are summarised below.

Issues Highlighted for Consultation

A. Financial Assistance

9. Section 47A of the CO imposes a broad prohibition on a Hong Kong company (and its subsidiaries) giving financial assistance to a third party for the purpose of acquiring shares in that company. Certain exceptions are set out in section 47C while special restrictions apply to listed companies (section 47D). Unlisted companies are provided with an additional exception under which the company has to pass a solvency test and obtain approval from shareholders with a special resolution, while the assistance must be provided out of distributable profits to the extent that the net assets are reduced by the assistance (section 47E).

10. In Chapter 2 of the consultation paper, we asked if the restrictions on financial assistance should be abolished for private companies. We also asked, if the answer is in the affirmative, whether (a) the existing rules for listed and unlisted public companies in the CO should be retained; or (b) the rules for both listed and unlisted public companies should be streamlined as set out in Part 5 of the CB. Under Part 5, generally speaking, a company will be allowed to give financial assistance, regardless of the source of funds, subject to satisfaction of the solvency test and compliance with the requisite procedures in the following three scenarios:-

(a) Scenario (a): approval by the board of directors while the aggregate amount of financial assistance does not exceed 5% of the shareholders' fund (clause 5.79);

(b) Scenario (b): approval by the board of directors with unanimous approval of the shareholders obtained for the financial assistance (clause 5.80); or

(c) Scenario (c): approval by the board of directors with a notice to be given to shareholders regarding the financial assistance and allowing any shareholder to object to the court (clauses 5.81 to 5.85).

Respondents' views

Private Companies

11. Among the 39 submissions commented on the issue, 27 of them (ten were from companies, eight organisations, five individuals and four law firms and accounting firms) supported abolition of restrictions on financial assistance for private companies, including the Association of Chartered Certified Accountants, Hong Kong (ACCA), Chinese General Chamber of Commerce (CGCC), Chamber of Hong Kong Listed Companies (CHKLC), HKICS and HKIoD. The main arguments for abolition are that there have been difficulties in applying the rules to identify financial assistance; and that the current directors' fiduciary duties and duty of care, as well as the duty for directors to prevent insolvent trading proposed to be introduced under a separate Corporate Rescue Bill[1], would provide sufficient check.

12. Six submissions, including those from the Chinese Manufacturers' Association of Hong Kong (CMAHK), HKAB, HKICPA and LSHK objected to outright abolition of the prohibition. Some considered that the underlying principle supporting the financial assistance restrictions remains valid, in that financial assistance from the resources of a company or its subsidiaries to purchase the company's shares could be prejudicial to the interests of creditors or minority shareholders in some cases. They considered that the provisions in Part 5 of the CB based on a solvency test would strike a right balance and offer certainty to financial institutions in financing leveraged buyouts. Some others considered that since one of the major safeguards mentioned in the consultation document, i.e. the duty on directors to prevent insolvent trading had yet to be enacted, it would be premature to abolish the restrictions in respect of private companies altogether at this stage.

13. For those who considered that private companies should still be subject to certain restrictions on financial assistance, some opined

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[1] See Consultation Conclusions on Review of Corporate Rescue Procedure Legislative Proposals, issued by FSTB in July 2010; available at http://www.fstb.gov.hk/fsb/ppr/consult/review_crplp.htm.

that private companies should be subject to a solvency test, as well as restrictions set out in scenarios (a) and (c) (paragraph 10 above) with such modifications that the 5% threshold be increased under scenario (a) and that the right for a member to contest the giving of financial assistance to the court should be subject to certain limitations thereby barring a member with a nominal shareholding from tactically holding up a commercially viable transaction.

14. Six submissions offered other comments. Some did not have a clear stance while others considered that the rules should only be abolished if the safeguards including the proposed directors' duty to prevent insolvent trading could serve as a more robust regulatory scheme to tackle the risks currently dealt with by the financial assistance rules.

Listed and Unlisted Public Companies

15. Fourteen submissions, including those of CGCC and CHKLC, considered that the rules for both listed and unlisted public companies should be streamlined in accordance with the rules set out in Part 5 of the CB (paragraph 10 above), with four out of the 14 submissions favouring abolition of the restrictions altogether.

16. Six submissions, including that of ACCA, considered that the existing rules in the CO should be retained (paragraph 9 above) as a regulatory tool to protect the interests of minority shareholders.

17. The remaining respondents made other suggestions. Some suggested codifying the directors' fiduciary duties while having in place the streamlined rules as set out in Part 5; others considered it sufficient to solely rely on the solvency test. The Securities and Futures Commission (SFC) pointed out that although the Listing Rules do not specifically deal with financial assistance *per se*, listed companies are subject to notification and disclosure requirements under Chapter 14 (Notifiable Transactions) and Chapter 14A (Connected Transactions) of the Main Board Listing Rules for transactions relating to giving of financial assistance, thus providing additional safeguards for minority shareholders' interests.

18. Some respondents provided specific comments on the three scenarios under Part 5 of the CB (paragraph 10 above), mainly considering that scenario (b) which requires an unanimous written resolution could not be applicable to listed companies; and that scenario (c) allowing any shareholder to petition to the court for restraining order would create uncertainty for listed companies and might not be effective in protecting minority shareholders' interests for they might not have the knowledge and/or means to apply to the court.

19. One respondent considered that the rules in Part 5 of the CB would impose additional burdens on listed companies incorporated in Hong Kong. This was a misunderstanding. We would like to clarify that Part 5 is intended to relax the broad prohibition against financial assistance under the existing CO. Such relaxation is applicable to listed companies alongside other companies incorporated in Hong Kong.

Our response

Private Companies

20. While many respondents supported the proposal to abolish the restrictions on financial assistance for private companies, others had grave concerns over outright abolition from the viewpoint of protection of minority shareholders and creditors. We also note that a number of respondents supported abolition *subject to* the introduction of the directors' duty to prevent insolvent trading which is currently under study. SCCLR also considers it prudent to retain certain restrictions on financial assistance for private companies, pending the introduction of insolvent trading provisions.

21. On balance, therefore, while abolition of financial assistance restrictions in the long run is supported in principle, for the purpose of the CB, safeguards should be laid down against giving of financial assistance pending the actual enactment of the directors' duty to prevent insolvent trading. In the meantime, the intended abolition

of financial assistance restrictions on private companies would not be featured in the CB.

22. To simplify the law, we would recommend that the safeguards against financial assistance be streamlined as detailed in paragraph 23 below, having regard to the current CO provisions and the proposed provisions in Part 5 of the CB. For the same reason and given the common goal to accord protection to minority shareholders, we also recommend that the same provisions be applicable to both private and public companies.

Listed and Unlisted Public Companies

23. Under the current CO, listed companies are basically prevented from giving financial assistance. This is considered by many as draconian. Many respondents supported the proposed relaxation of the prohibition. We will adopt the provisions in Part 5 of the CB with the following modifications:-

(a) scenarios (a) and (b) as set out in paragraph 10 above will remain as is;

(b) scenario (c) will be modified to require a company to obtain shareholders' or members' approval by an ordinary resolution (which is less stringent than the special resolution required of unlisted companies under section 47E of the CO) prior to the giving of financial assistance; and

(c) the right of shareholders or members under scenario (c) to petition to the court will remain, but the petition will have to be lodged by not less than 10% of the members (if the company is not limited by shares) or members having not less than 10% voting rights in total. A similar threshold is present in section 47G of the CO, mainly to minimise frivolous claims.

24. For reasons mentioned in paragraph 22 above, the three scenarios (namely, scenarios (a) and (b) and the modified scenario (c) in paragraph 23 above) will be equally applicable to private companies.

Companies giving financial assistance may invoke the provisions as appropriate to suit their needs.

B. Directors' Remuneration Reports

25. Section 161 of the CO requires all companies to set out the aggregate amount of the emoluments and pensions of, and compensation paid in relation to loss of office to directors and past directors in the account of the company. Currently, all listed companies in Hong Kong are required under the Listing Rules to disclose in their financial statements, on a named basis, details of directors' and past directors' emoluments.

26. In Chapter 3 of the consultation document, we have asked whether there is no need for the CB to require (a) all listed companies incorporated in Hong Kong; and (b) unlisted companies incorporated in Hong Kong where members holding not less than 5% of the total voting rights have so requested, to prepare separate directors' remuneration reports.

Respondents' views

27. A total of 35 submissions have expressed views on the subject, with the majority (26) including those from CGCC, CHKLC, HKAB, HKGCC, HKICPA, HKICS, LSHK and the Society of Chinese Accountants & Auditors (SCAA) considering that the requirement is unnecessary. Two submissions considered that the requirement is necessary while seven submissions expressed other opinions such as suggesting carving out all listed companies in Hong Kong (i.e. (a) in paragraph 26) from the requirement given the sufficient disclosure under the Listing Rules; and allowing a company to waive the requirement where there is support from at least 75% of its shareholders.

Our response

28. It is considered that any improvements to the disclosure of the remuneration of directors of listed companies should be better considered under the Listing Rules and/or the Securities and Futures Ordinance (Cap. 571). In this regard, we have invited the SFC and the Hong Kong Exchanges and Clearing Limited (HKEx) to keep under review the compliance and effectiveness of the relevant Listing Rules. The requirement of directors' remuneration reports would also be too onerous for unlisted companies. With the majority of the respondents supporting not to introduce the requirement of separate directors' remuneration reports in the CB, after consulting the SCCLR, we will proceed accordingly.

C. Investigations and Enquiries by the Financial Secretary (FS)

29. Sections 142 to 151 of the CO provide for power for the FS to appoint an inspector to conduct an investigation into the affairs of a company. The appointment may be made under section 142 on members' application; or under section 143 on the FS' own initiative (a) where there is fraud or mismanagement; (b) upon a court order mandating such appointment; or (c) upon application by a company which has passed a special resolution to make such a request. Under (a) and (c), the FS would consider, *inter alia*, whether there is significant public interest at stake that warrants invoking the power.

30. Sections 152A to 152F of the CO provide for the power for the FS or a person authorised by him to enquire into the books and papers of a company in assessing whether an investigation is warranted upon application from members under section 142 of the CO.

31. In Chapter 4 of the consultation document, we asked for views on the proposed changes to the provisions governing the investigation or enquiry that may be initiated by the FS as detailed in paragraphs 29 and 30 above. The key proposals include the following:-

(a) enhancing the investigatory powers of an inspector;

(b) extending the categories of companies that may be subject to investigation to include also companies incorporated outside Hong Kong but doing business in Hong Kong (even if not having a place of business in Hong Kong); as well as any other companies, wherever incorporated, within a group. The latter extension is also applicable to enquiry; and

(c) improving safeguards for confidentiality of information and protection of informers.

Respondents' views

32. We have received 28 submissions on the subject, out of which 12 agreed or had no objection to the proposals, while 16 had other comments, including questioning the practicability of covering companies that had no place of business in Hong Kong.

Our response

33. We will proceed with the proposal to extend the right to apply to the FS for appointment of inspectors to members of registered non-Hong Kong companies (i.e. non-Hong Kong companies having a place of business in Hong Kong and registered under Part 16 of the CB), so as to align the treatment of Hong Kong and non-Hong Kong companies. However, taking into account respondents' views that it would be impractical and rarely possible, if at all, to conduct effective investigation into the affairs of overseas companies that do not have a place of business in Hong Kong, we will not adopt the proposal to subject those companies to investigation.

D. Enquiries by the Registrar

34. In Chapter 4 of the consultation document, we proposed new but limited powers for the Registrar to obtain documents, records and information for the purposes of ascertaining whether any conduct that would constitute certain offences under the CB has taken place.

As a start, the offences will be confined to clause 15.7(7) concerning the giving of false or misleading information in connection with an application for deregistration of a company; and clause 20.1(1) concerning the making of a statement that is misleading, false or deceptive in any material particulars.

Respondents' views

35. The majority (16) out of a total of 25 respondents supported or did not object to the proposed new powers. A few respondents (such as LSHK and CMAHK) disagreed with the proposal and were concerned about allegedly excessive powers (such as criminal sanctions for non-compliance and the right to delegate power to any public officer).

Our response

36. The proposed new powers would facilitate the enforcement effort of the Companies Registry and help safeguard the integrity of the public register. In view of the majority support, we will take forward the proposal. In response to the concern about "excessive powers", we would like to clarify that the Registrar may invoke the enquiry powers only if she has reason to believe, and certifies such in writing, that an offence has been committed; the record, document, information or explanation is relevant to the enquiry; and the person is in possession of the record or document (clause 19.36(2)). The new powers are, therefore, appropriately restrained.

E. Providing Reasons to Explain Refusal to Register a Transfer of Shares

37. Section 69(1) of the CO requires a company which refuses to register transfer of shares or debentures to send a notice of such refusal to the transferor and transferee within two months after the transfer was lodged with the company. There is no requirement for the notice to be accompanied by the reasons for the refusal.

38. In Chapter 5 of the consultation document, we asked if a new requirement should be introduced in the CB to require companies to give reasons explaining their refusal. We also asked, if the answer is in the affirmative, whether the reasons should be given in a manner similar to that prescribed under the UK Companies Act 2006 (UKCA 2006), viz. mandatory where there is a refusal; or similar to the case of transmissions by operation of law under section 69(1A) of the CO, viz. the prospective transferee is entitled to call on the company to provide reasons for the refusal to register him as a member while the company is required to register the transfer if it fails to furnish reasons within 28 days after receipt of the request.

Respondents' views

39. A total of 36 submissions commented on this subject, among which 21 submissions, including those from CGCC, CHKLC, HKAB, HKICPA, HKIoD and LSHK, agreed that reasons should be provided; while 13 submissions, including those from HKGCC and SCAA, disagreed; and two offered other comments. The arguments both for and against the proposal are similar to those set out in the consultation document. Particularly, those agreed to the new proposal saw there is need to enhance transparency and to ensure proper exercise of the directors' duties to the benefit of the company. Those disagreed were mainly of the view that it has been established common law position to permit directors not to give reasons for their acceptance or rejection of transfer, and that currently there are already sufficient grounds (e.g. breach of fiduciary duties, etc.) to sanction against directors' wrongful refusals.

40. If reasons are to be given, among those who agreed, 11 (including CGCC, CHKLC, HKAB, HKICPA and LSHK) preferred arrangements similar to transmission by operation of law (i.e. upon request); while ten (including the HKIoD) preferred the UKCA 2006 approach (i.e. mandatory).

Our response

41. Given the majority support, we will require companies to give reasons explaining its refusal to register a transfer of shares. While views were divided on whether giving of reasons should be mandatory or upon request, as there is slightly more support for the latter and the approach has been adopted in the CO with respect to transmission of shares by operation of law, we recommend its adoption.

Proposed Changes to Provisions in Part 9 (Accounts and Audit)

42. Apart from comments on the above highlighted issues, we have also received a significant number of comments on the draft clauses of Part 9 (Accounts and Audit) of the CB. In the light of the feedback received and the SCCLR's advice, we propose a number of substantive changes to Part 9, as elaborated below:-

(I) Qualifying Criteria for Private Companies to Prepare Simplified Financial and Directors' Reports

43. Section 141D of the CO provides that a private company (other than a company which is a member of a corporate group and certain companies specifically excluded, such as insurance and stock-broking companies) may, with the written agreement of all the shareholders, prepare simplified accounts and simplified directors' reports in respect of one financial year at a time. According to the SME-Financial Reporting Framework issued by HKICPA, a company qualifies for reporting based on the SME-Financial Reporting Standards (SME-FRS) if it satisfies the requirement under section 141D. The Joint Government/HKICPA Working Group to Review the Accounting and Auditing Provisions of the CO (JWG) recommended to relax the qualifying criteria to enable more private companies to prepare simplified financial and directors' reports (referred to as reporting exemption in the draft CB) along the following lines:-

(a) a private company (except for a banking/deposit-taking company, an insurance company, or a stock-broking company), will automatically be qualified for simplified reporting, if it is a "small private company" that satisfies certain conditions[2];

(b) a private company that does not qualify as a "small private company" can also enjoy the benefit of simplified financial and directors' reports if members holding at least 75 % of the voting rights so resolve and no other member objects;

(c) a group of companies that qualifies as a "group of small private companies"[3] can also prepare simplified financial and directors' reports; and

(d) a group of private companies that is not qualified as a "group of small private companies" can elect for simplified reporting with the approval of members holding at least 75% of the voting rights and no member objects in the holding company or in the non-small private companies, depending on the circumstances.

44. As noted in the consultation document[4], the Hong Kong Financial Reporting Standard for Private Entities (HKFRS for PEs) was adopted on 30 April 2010. Eligible private entities which do not have public accountability now have a reporting option that is less onerous in terms of disclosure requirements than the full HKFRSs. In that regard, we welcomed views of the accounting profession on whether and, if so, how the above proposals should be modified.

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2 Satisfying any two of the following conditions:-
- Total annual revenue of not more than HK$50 million.
- Total assets of not more than HK$50 million.
- No more than 50 employees.

3 Satisfying any two of the following conditions:-
- Aggregate total annual revenue of not more than HK$50 million net.
- Aggregate total assets of not more than HK$50 million net.
- No more than 50 employees.

4 See Explanatory Notes on Part 9, paragraph 10.

Respondents' views

45. HKICPA and most major accounting firms have reservations about the proposal to extend the possible use of SME-FRS to private companies/groups of any size, where members holding 75% of the voting rights so resolve and no member objects (i.e. paragraph 43(b) and (d) above). Their reservation mainly stemmed from the fact that SME-FRS was developed essentially for SMEs as an alternative to the full HKFRSs and generally has much simpler accounting requirements. Therefore, SME-FRS might not be able to reflect, with the degree of transparency that would be expected, the state of affairs of sizeable companies/groups with more complex accounts.

Our response

46. In the light of the above concern and the fact that a simpler HKFRS for PEs is now available as a reporting option for "large" private companies/groups, we recommend keeping only the proposed option for "small" private companies/groups to prepare simplified financial and directors' reports (i.e. paragraph 43(a) and (c) above) and not to introduce the option for other private companies/groups to opt for simplified reporting requirements based on approval by members holding 75% voting rights and no objection from the remaining members (i.e. paragraph 43 (b) and (d) above).

(II) "True and Fair View"

47. Clause 9.25 of the CB requires that annual financial statements and annual consolidated financial statements must give a true and fair view of the financial position and financial performance of the company and the subsidiary undertakings (if applicable).

Respondents' views

48. HKICPA does not support the proposal that all companies incorporated in Hong Kong should be required to present their financial statements in accordance with a "true and fair view".

According to HKICPA, currently, auditors are not permitted to express a "true and fair" opinion on financial statements prepared under SME-FRS, as SME-FRS is considered a compliance framework, as defined in the Hong Kong Standard on Auditing (HKSA) 200 (Clarified). Instead, for financial statements prepared under SME-FRS, auditors should express an opinion as to whether the relevant financial statements are prepared, in all material respects, in accordance with the framework.

Our response

49. In view of HKICPA's comments, we will exempt the financial statements of those companies preparing simplified financial reports from the "true and fair view" requirement.

(III) Preparation of Financial Statements by a Holding Company

50. JWG recommended that a holding company should only be required to prepare consolidated financial statements for the group and there is no need to prepare separate financial statements for the holding company itself. We have accordingly provided in clause 9.24(1) and (2) of the CB that directors must prepare for each financial year financial statements (for non-holding companies) or consolidated financial statements (for holding companies) for the group.

Respondents' views

51. As noted by an accounting firm, a holding company that intends to change its status from a private to a public company (under Part 3 of the CB) or to distribute its profits and assets (under Part 6 of the CB) is required to prepare its own financial statements in addition to the consolidated financial statements for the group.

Our response

52. Upon closer examination, we note that since holding companies must prepare annual consolidated financial statements in the manner as

prescribed under Subdivision 3 of Division 4 of Part 9, in particular clause 9.25 and the Schedule to Part 9, the annual consolidated financial statements (with the balance sheet of the holding company shown in the notes to accounts) could also be used for the purpose of clauses 3.33 and 6.13 to save the companies' efforts.

53. To standardise the disclosure requirements in Part 6, we will also require the interim financial statements under clause 6.14 and the initial financial statements under clause 6.15 to be prepared in the same manner as the financial statements or consolidated financial statements under Part 9, except for such matters which are not material for determining the distributable profit and that the financial statements may not cover a full financial year. This will be consistent with the current requirements under the CO.

(IV) Remuneration of Auditors

54. Clause 9.25(3) and Part 2 of the Schedule to Part 9 require the financial statements of a company (not falling within the reporting exemption) to disclose, amongst other things, the audit and non-audit services provided by the auditor or its associates and related remuneration, in accordance with JWG's recommendation.

Respondents' views

55. HKICPA and some major accounting firms expressed concern on the requirement as it was unclear as to the scope of "associate" and "service" to be covered. There is also concern that if the definition of "associate" follows the UK's regulations, the scope may be so wide that the cost of obtaining such information, particularly for a sizable group with operations in many countries, may outweigh the benefits.

Our response

56. We note that the proposal to extend the disclosure of the auditor's remuneration to cover non-audit services undertaken by the auditor

and its associates involves complex issues. As far as listed companies are concerned, Paragraph 2(h) of Appendix 23 to the Listing Rules already provides for the mandatory disclosure of the remuneration of the auditor and related entities for audit and non-audit services in the corporate governance report of listed issuers [5]. For unlisted companies, the existing disclosure requirement in relation to auditor's remuneration under Paragraph 15 of the Tenth Schedule of CO[6] would seem to be sufficient. In the light of the comments received and after consulting the SCCLR, we will preserve the existing CO requirement in the CB. We have also invited SFC and HKEx to keep under review the compliance and effectiveness of the relevant provision of the Listing Rules.

(V) Requiring Directors to Make a Declaration as to Whether the Financial Statements Give a True and Fair View of the Financial Position and Financial Performance of the Company

57. Section 129B of the CO requires every balance sheet of a company to be approved and signed on behalf of the board of directors. In clause 9.28 of the CB, based on JWG's recommendation, we propose to replace it by a requirement for the financial statements to be accompanied by a directors' declaration which states whether, in the directors' opinion, the financial statements or consolidated financial statements, give a true and fair view of the company or the group's financial position and financial performance. The purpose is to remind the directors of their obligation to prepare financial statements that give a "true and fair view".

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[5] It requires an "analysis of remuneration in respect of audit and non-audit services provided by the auditors (including any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as part of the audit firm nationally or internationally) to the listed issuer. Such analysis must include, in respect of each significant non-audit service assignment, details of the nature of the services and the fees paid."

[6] Paragraph 15 of the Tenth Schedule to the CO provides that the amount of the remuneration of the auditors shall be shown under a separate heading, and for the purposes of this paragraph, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

Respondents' views

58. Some respondents considered the proposed directors' declaration unnecessary and were concerned that directors who were not accountants might have difficulty opining on the financial statements. HKICPA and SCAA also noted that complications would arise in a situation where the directors made a declaration that, in their opinion, the financial statements gave a true and fair view of the financial position and the financial performance of the company, but the auditor held a different view. Moreover, as a result of the change suggested in paragraph 49 above, the financial statements of those companies preparing simplified financial reports would be exempted from the "true and fair view" requirement.

Our response

59. In view of the above concern, we will not introduce the proposal of requiring directors' declaration regarding financial statements. This will not detract from the directors' duty to prepare financial statements that give a true and fair view or are properly prepared in accordance with the applicable accounting standards. We will preserve the existing requirement under section 129B of the CO in the CB.

(VI) Business Review

60. To enhance transparency, the JWG recommended that all public companies and "large" (i.e. other than those qualified to apply the simplified accounting and reporting requirements) private and guarantee companies should be required to prepare as part of the directors' report, a business review which is more analytical and forward-looking than the information currently required under the CO. This proposal is included in the CB. The proposal has drawn a number of comments as summarised below: -

(a) some respondents did not see the need for private companies to prepare a business review and were concerned about the

additional cost. For listed companies, the content of such a review would be better dealt with through the Listing Rules. LSHK suggested that an "opt-in" arrangement would be more appropriate, particularly in the context of private and guarantee companies;

(b) some considered the requirement an unnecessary burden for wholly-owned subsidiary companies (public or private). The position of wholly-owned subsidiary companies is similar to that of owner-managed companies;

(c) some were concerned about the wording in clause 9.31 regarding the contents of business review. For example, a major accounting firm commented that the lack of objective measure to judge the meaning of "comprehensive" in clause 9.31(2)[7] rendered this requirement unduly burdensome on directors;

(d) HKICPA and a few other respondents considered it important that directors should feel comfortable with making forward-looking statements that were meaningful. They suggested that a "safe harbour" clause be included in the CB, which would provide directors with protection from civil liability for statements or omissions in the directors' report. Reference was made to section 463 of the UKCA 2006 which provides that directors are liable solely to the company, and no other person, for a loss suffered by the company if statements are untrue or misleading or there is an omission of anything required to be in the report. The directors are liable if they knew a statement was made in bad faith or recklessly, or an omission was made for deliberate and dishonest concealment of material facts. The protection does not affect any other liability for a civil penalty or criminal offence; and

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[7] Clause 9.31(2) stipulates that a business review must be a balanced and comprehensive analysis, consistent with the size and complexity of the company's business, of:-
(a) the development and performance of the company's business during the financial year; and
(b) the position of the company's business at the end of the financial year.

(e) some queried that prohibiting disclosure by cross-referring to the directors' report under clause 9.32 was unnecessarily restrictive. Currently, for listed companies, a business review is normally included as a separate section from the directors' report in the annual report. For presentation purposes, listed companies should have the flexibility to cross-refer to information in the annual report.

Our response

61. In response to the above concerns, we recommend that the following modifications be made to the "business review" proposal:-

(a) in addition to those SMEs that are already eligible for reporting exemption, private companies can opt out of the business review requirement by special resolution. We consider that this would address the concern about the requirement being too onerous for private companies;

(b) wholly-owned subsidiary companies will be exempted from the business review requirement. The holding company will prepare the business review if it is not exempted under (a) above;

(c) clause 9.31(2) requiring a business review to be "comprehensive analysis" will be deleted, for we agree with the comments that the contents of the business review are adequately covered by clause 9.31(1) which requires that, amongst other things, the business review must contain "a fair review of the company's business", together with clause 9.31(3) which sets out that "to the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include…an analysis using financial key performance indicators";

(d) a "safe harbour" provision along the lines of section 463 of the UKCA 2006 (paragraph 60(d) above) will be inserted; and

(e) clause 9.32 which prohibits disclosure by cross-reference will be deleted to provide more flexibility for companies in preparing the business review and directors' report.

(VII) Auditor's Rights to Information

62. Clause 9.56 of the CB provides that auditors will be empowered to require a wider range of persons, including the employees of the company and the officers and employees of its Hong Kong subsidiary undertakings, and any person holding or accountable for any of the company's or the subsidiary undertakings' accounting records, to provide them with information, explanations or assistance without delay, as they think necessary for the performance of their duties as auditors. Failure to comply with the requirement to provide information, etc. to auditors will be liable to criminal sanctions.

Respondents' views

63. A number of respondents, including CHKLC, HKGCC, HKICPA, HKICS and HKIoD, have expressed the following concerns:-

(a) the scope of persons is too wide and subjecting employees or ex-employees to criminal sanctions for failing to provide information, etc. to auditors is potentially unfair and oppressive. It may cause hassles for companies to fill in-house finance positions and necessitates changes to the companies' recruitment policies and employment contracts thus unnecessarily increasing the costs of doing business. The proposed requirement for holding companies to obtain information, etc. from individual employees at any level, currently or formerly associated with those subsidiaries, could also be impracticable;

(b) requiring the provision of "assistance" (in addition to information and explanations) is too broad and over-reaching.

Terms such as "without delay" could also be too vague and should be more clearly defined; and

(c) the requirement should not be based on what "the auditor thinks necessary for the performance of his duties as auditor of the company", but rather on what, objectively, is reasonably necessary for the performance of his duties.

Our response

64. In the light of the above concerns and after considering the views of the SCCLR, we recommend the following modifications to the proposal:-

(a) removing "employee" and ex-employees of companies or their subsidiary undertakings from the scope of persons liable to give information etc. to the auditor. We will however continue to require officers of a company's Hong Kong subsidiary undertakings and any person holding or accountable for any of the company's or the subsidiary undertakings' accounting records to give information etc. to the auditor;

(b) removing the requirement to give "assistance" to the auditor. Substitute "as soon as practicable" for "without delay" to address the concern about vagueness of the term; and

(c) substituting "that the auditor reasonably requires" for "that the auditor thinks necessary" to address the concern about the lack of an objective test in the requirement.

CONCLUSION

65. In summary, we are prepared to adopt the following proposals in the CB:-

(a) the restrictions on financial assistance to a third party to purchase a company (or its holding company)'s shares will be relaxed and applicable to both private and public (listed or unlisted) companies. The relaxed restrictions will include three scenarios, namely (a) approval by the board of directors if the aggregate amount of financial assistance does not exceed 5% of the shareholders' fund; (b) approval by the board of directors with unanimous approval of the shareholders; and (c) approval by the board of directors with approval by members or shareholders by ordinary resolution, subject to the right of at least 10% of members (if the company is not limited by shares) or members holding at least 10% voting rights (if the company is limited by shares) to petition to the court for a restraining order. All the three scenarios will be subject to a solvency test;

(b) the power of an inspector appointed by the FS to investigate a company's affairs will be enhanced by requiring that, e.g. a person under investigation to preserve records and verify statements made to the inspector. Companies eligible to apply to the FS for appointment of inspectors will be extended to cover registered non-Hong Kong companies. In addition, confidentiality of matters or information obtained in an investigation, and protection of persons who volunteered information to facilitate an investigation will be enhanced;

(c) the Registrar will be empowered to obtain documents, etc. for the purpose of ascertaining whether there is misconduct, which amounts to an offence, concerning false or misleading information that relates to an application for deregistration of a company; and making of misleading or deceptive statements in any material particulars;

(d) companies will be obliged to explain a refusal to register a transfer of shares upon request by the transferor or transferee, and to register the transfer if it fails to furnish reasons within 28 days after receipt of the request;

(e) a private company (except for a banking/ deposit-taking company, an insurance company, or a stock-broking company) will automatically be qualified for simplified reporting if it is a "small private company"[8]. Similarly, a group of companies which qualifies as a "group of small private companies"[9] can also choose to prepare simplified financial and directors' reports;

(f) companies that prepare simplified financial reports will be exempted from the "true and fair view" requirement in annual financial statements or annual consolidated financial statements (as the case may be), to align with HKSA 200 (Clarified) as explained in paragraph 48 above;

(g) to save companies' efforts, the annual consolidated financial statements that must be prepared by a holding company in accordance with Subdivision 3 of Division 4 of Part 9 will also be taken as the financial statements required under clause 3.33 for the re-registration of a company that converts from a private to public company and under clause 6.13(1) for distribution of profits and assets. For the same reason and to remove asymmetrical disclosure requirements under Part 6, the interim and initial financial statements under clauses 6.14 and 6.15 respectively will also be prepared in accordance with Subdivision 3 of Division 4 of Part 9, except for such matters which are not material for determining the distributable profit and that the financial statements may not cover a full financial year;

(h) the existing disclosure requirement in relation to auditor's remuneration under Paragraph 15 of the Tenth Schedule to the CO will be preserved in the CB;

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[8] Satisfying any two of the following conditions:
- Total annual revenue of not more than HK$50 million.
- Total assets of not more than HK$50 million.
- No more than 50 employees.

[9] Satisfying any two of the following conditions:
- Aggregate total annual revenue of not more than HK$50 million net.
- Aggregate total assets of not more than HK$50 million net.
- No more than 50 employees.

(i) all public companies and "large" (i.e. other than those qualified to apply the simplified accounting and reporting requirements) private and guarantee companies will be required to prepare an analytical business review in the directors' report (though "large" private companies may opt out if approved by a special resolution). To limit directors' liability, a "safe harbour" clause along the lines of section 463 of the UKCA 2006 will be provided; and

(j) in addition to the existing rights to request information from the officers of a company (i.e. directors, managers and company secretary), auditors will be empowered to require information and explanations that the auditors reasonably require for the performance of their duties as auditors from a wider range of persons, including officers of a company's Hong Kong subsidiary undertakings and any person holding or accountable for any of the company's or the subsidiary undertaking's accounting records. Failure to comply with the requirement to provide information, etc. to auditors will be subject to criminal sanctions.

Other Issues

66. Apart from the issues discussed above, we have considered the comments on other aspects of the CB, mainly concerning technical and drafting issues. Major comments and our responses are set out in Appendix III.

WAY FORWARD

67. We are finalising the CB, taking into account the views received from the First and Second Phase Consultations of the Draft CB and the Consultation Conclusions. We aim to introduce the CB into the Legislative Council in early 2011.

Financial Services and the Treasury Bureau
25 October 2010

Appendix I

List of Forums and Meetings Attended

Date	Organising Parties	Nature
14 May 2010	Small and Medium Enterprises Committee*	Meeting
10 June 2010	Hong Kong Legal Professionals Association*	Seminar
22 June 2010	Companies Bill Team, Financial Services and the Treasury Bureau	Forum
26 June 2010	Democratic Alliance for the Betterment and Progress of Hong Kong*	Seminar
28 June 2010	Society of Chinese Accountants & Auditors*	Seminar
12 July 2010	Hong Kong Institute of Certified Public Accountants*	Forum
13 July 2010	The Hong Kong Institute of Directors*	Meeting
15 July 2010	Federation of Hong Kong Industries*	Meeting
19 July 2010	Hong Kong Brands Protection Alliance*	Seminar
21 July 2010	Hong Kong Institute of Certified Public Accountants (Small and Medium Practitioners)*	Forum
26 July 2010	The Association of Chartered Certified Accountants*	Seminar

* We were invited by the organising parties to attend the forum/meeting to further introduce the proposals on the Draft Companies Bill – Second Phase Consultation. Comments on the proposals were also received from members of the organising parties through discussions.

Appendix II

List of Respondents

1. Association of Chartered Certified Accountants, Hong Kong, The
2. BEST, Roger
3. British Chamber of Commerce in Hong Kong, The
4. Cathay Pacific Airways Limited
5. Chamber of Hong Kong Listed Companies, The
6. CHAN, Frances
7. Chinese General Chamber of Commerce, The
8. Chinese Manufacturers' Association of Hong Kong, The
9. Cheung Kong (Holdings) Limited
10. Clifford Chance
11. CLP Holdings Limited
12. Computershare Hong Kong Investor Services Limited
13. Consumer Council
14. CPA Australia
15. Deloitte Touche Tohmatsu
16. Ernst & Young Advisory Services Limited
17. Federation of Share Registrars Limited
18. Great Eagle Holdings Limited
19. Henderson Land Development Company Limited
20. HO, Tak Wing
21. Hong Kong Aircraft Engineering Company Limited
22. Hong Kong Association of Banks, The

23. Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies, The

24. Hong Kong Federation of Insurers, The

25. Hong Kong General Chamber of Commerce

26. Hong Kong Institute of Certified Public Accountants

27. Hong Kong Institute of Chartered Secretaries, The

28. Hong Kong Institute of Directors, The

29. Hong Kong Institute of Trade Mark Practitioners, The

30. Hong Kong Securities Association Ltd

31. Hong Kong Trustees' Association Ltd

32. Hongkong and Shanghai Banking Corporation Limited, The

33. Hutchison Harbour Ring Limited

34. Hutchison Telecommunications Hong Kong Holdings Limited

35. Hutchison Telecommunications International Limited

36. Hutchison Whampoa Limited

37. Intel Corporation

38. JONES, Gordon

39. KPMG

40. LAM, Kin Kun Arthur

41. Law Society of Hong Kong, The

42. Linklaters

43. Liway Charm Limited

44. Mandatory Provident Fund Schemes Authority

45. MOK, Yun Lee Paul

46. NG, S M Karen

47. Norton Rose Hong Kong

48. Oxfam Hong Kong

49. PricewaterhouseCoopers

50. Securities and Futures Commission

51. Slaughter and May

52. Society of Chinese Accountants & Auditors, The

53. Stock Exchange of Hong Kong Limited, The

54. SUEN, Chi Wai

55. Swire Pacific Limited

56. TSAO, Yea Tann Simon

57. 日昇實業有限公司

58. 廖甘樹

59. One respondent has requested his name not to be disclosed

Appendix III

The Administration's Response to Comments Received during the Second Phase Consultation of the Draft Companies Bill

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Transitional provisions		
Overall	● Transitional provisions should be made available for review and comment prior to the introduction of the CB into the Legislative Council (LegCo).	● We aim to introduce the CB into the LegCo in early 2011. ● Transitional provisions are more technical in nature and would also be subject to LegCo's scrutiny. ● Given the above, we will not conduct a separate round of consultation on transitional provisions.
Allowing non-Hong Kong companies to re-domicile to Hong Kong		
Part 3	● The Government should consider allowing non-Hong Kong companies to re-domicile to Hong Kong, which will make Hong Kong a more competitive jurisdiction and reduce cost for maintaining corporate structure.	● It appears that there is no strong demand for inclusion of corporate migration provisions in the CB. We will keep in view market development.
Statement of capital and initial shareholdings to be contained in incorporation form		

[Note] The comments cited here are a summary of major comments in the submissions received during the Second Phase Consultation period. Comments on provisions being covered in the First Phase Consultation are not included.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Clause 3.7	● The term "share capital" should be defined for general application to this Part, Parts 4 and 5 and elsewhere in the CB. It is unclear what is meant by "amount of share capital" in a no-par value share system.	● The ordinary meaning of share capital, well recognised over the years, is considered sufficiently clear.
	● The contents of a statement of capital under clause 3.7 should be conformed to those in the statement of capital required under clause 4.69.	● The statement of capital is consistent with what is required under clause 4.69.
	● In the context of clause 3.7(1)(c), the requirement should include the currency of the amount paid up and unpaid, as companies can accept any currency in settlement for their shares.	● The amount paid up and unpaid will be stated in a currency and there is no restriction on the currency of payment for a company's share capital.
Issue of certificate of incorporation on registration		
Clause 3.11	● A company's status (private or public) is important and should be stated in the certificate of incorporation. Companies should have to apply for re-registration and a fresh certificate of incorporation when they change their status.	● Companies are required to file with the Companies Registry (CR) a notice of change of status from private to public or vice versa. This would be re-registration instead of incorporation, thus the company would not be required to apply for incorporation again.
Alteration affecting status of private company		

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Clause 3.33	● There should be a mechanism for a public company to become private.	● We agree, and will amend the CB accordingly.
	● It is important that an application for re-registration is filed with the CR indicating the company's changed status.	● We will amend the CB to require a company to file with the CR any notice of change of status from private to public, or vice versa.
	● A holding company that intends to change its status from private to public is required to prepare annual financial statements of its own under clause 3.33 in addition to the consolidated financial statements of the group under Part 9.	● Comments noted. We will amend clause 3.33 so that the consolidated financial statements prepared by a holding company under Part 9 will be the annual financial statements under clause 3.33. The statement of financial position (i.e. the balance sheet) of the holding company required to be contained in the notes to the consolidated financial statements can be relied on for re-registration purpose under Part 3.
Company must not be registered by certain names		
Clause 3.39(2)(c)	● The restriction on company name should be expanded to cover company names that are "too-like" the name of a company for which a direction to change its name has been given by the Registrar of Companies (the Registrar). A name shall be deemed "too-like" another name if it contains the same or substantially the same distinctive element as a well-known trademark or the name of another party.	● We do not propose that the Registrar considers before registration whether a company name is similar to a name for which a direction of changing name has been given. Such an arrangement would lead to a huge surge in workload which would in turn cause inevitable delay in the company registration process. We also consider it unfair to grant any company a monopoly over the use of any distinctive words/expressions in its name.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	● There should be a "well-known mark" list or a "watch list" on which trade mark owners can apply to have their trade marks recorded. A company applying to register a name including a trade mark on such a list could be asked by the CR for confirmation or evidence that it is connected with the trade mark owner. In addition, an opposition procedure can be established for trade mark owners to object to a name, before a company is registered.	● Our company registration system and trademark registration system are distinct and separate. It would be inequitable to grant trademark owners a monopoly over company names covering all kinds of business activities.
	● The Government should reconsider introduction of a company names adjudication system similar to that in the UK.	● We would keep in view the effectiveness of the new measures to tackle "shadow companies" and draw reference from the UK as appropriate.
Registrar may direct company to change same or similar name etc.		
Clause 3.48	● Under clause 3.48(5), the removal of the imprisonment penalty provision on companies' officers will likely reduce the deterrent effect in non-compliance with such direction.	● Having reviewed all the offence provisions under the CB, we consider that imprisonment would not be an appropriate penalty for this offence, for its gravity does not justify such. Moreover, the new remedy empowering the Registrar to direct change of name of the company to a company registration number under clause 3.50 should be an effective deterrent.
	● A minimum period of compliance should be specified in the legislation (e.g. six weeks), while empowering the Registrar	● In practice, a company is usually required to comply with the Registrar's direction to change the name within six weeks. This is to allow reasonable time

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	to specify longer periods in the relevant notice.	for the company to take necessary steps (e.g. passing a resolution) for changing its name.
Registrar may direct company to change same or similar name etc., and Registrar may replace company name in case of failure to comply with direction		
Clauses 3.48 and 3.50	● Companies which do not comply with a court order should be struck off the register by the Registrar within a specified period. This would streamline the whole process by removing an unnecessary procedure and create a significant incentive for compliance with the court order.	● As a company will be dissolved upon being struck off the register, the proposal may adversely affect the interests of third parties, such as creditors, and may create uncertainties over the liabilities and obligations of the company and its officers. In case a company is defunct, there are already existing provisions and established procedures for striking off such defunct companies.
Registrar may direct company to change misleading or offensive name etc.		
Clause 3.49	● The six-week period to comply with the Registrar's direction to change its name could be shortened to put more pressure on shadow companies to change their company names as soon as possible after a direction has been given.	● A six-week period is reasonable for the companies to take the necessary steps to change their name.
Registrar may replace company name in case of failure to comply with direction		
Clause 3.50	● A direction should target change of the distinctive part (i.e. the well-known mark in question), and not the company name as a whole. In this regard, a direction which refers to a court order restraining the company from using its name or	● It would be unfair to grant any company a monopoly over the use of any distinctive words/expressions in its name.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	any part of the name can follow the terms of the court order.	● For cases in which the Registrar issues change name direction pursuant to a court order, the Registrar will make due reference to the terms of the court order.
Company's capacity etc.		
Clause 3.54	● In the UK, the Memorandum of Association (MA) has been abolished and companies are not required to have object clauses in their Articles of Association (AA). It would be appropriate to include wording similar to section 39 of the UK Companies Act (UKCA) 2006 in clause 3.54, which provides that the validity of a company's acts is not to be questioned on the ground of lack of capacity because of anything in a company's constitution.	● The abolition of ultra vires now contained in sections 5A and 5C of the CO are restated in clauses 3.54 and 3.59 of the CB.
Transaction or act binds company despite limitation in articles etc.		
Clause 3.56	● It is not clear what circumstances might render a person not acting in "good faith" against the "good-faith" presumption in clause 3.56(2)(b). It is suggested that where a person does have actual knowledge (rather than constructive knowledge) of restrictions in a company's AA, he should be barred from relying on the provision.	● To allow flexibility for the court to take account of all relevant facts of individual cases, it is not desirable to specify the circumstances under which such presumption would be revoked.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	● The presumption of acting in good faith should be clarified in the light of *Re Moulin Global Eye Care Holdings*[1], which found that a party could be put on notice of possible internal procedural irregularities in a company's indoor management rules if "some suspicion should have been aroused in the minds of [the lawyers] that a gross irregularity was in contemplation". This threshold is too low. The CB should state that a mere suspicion of an irregularity will not displace the presumption of acting in good faith.	
	● The wording of the relevant section of the UKCA 2006, upon which that of the CB is based, allows for the argument that "each individual director now has effectively unlimited power to commit the company to obligations if the party with whom he transacts on behalf of the company deals with it in good faith"[2]. Consideration should be given as to whether clarification should be made to confirm that the current law (where a third party must demonstrate apparent authority[3]) remains unchanged.	● It should be more appropriate to allow the case law to develop on the interpretation of the CB provision.
Section 3.56 not to apply to certain cases		
Clause 3.58	● The exception under clause 3.58 must not slip to become a let-off for section 21 companies to condone poor in-house	● Concern noted. The intention of the clause is to enhance and not to derogate corporate governance. We consider it more appropriate for the court to

[1] [2010] 1 HKC 90.
[2] *Palmer's Company Law: Annotated Guide to the Companies Act 2006*, 2007, 1st edition, Sweet & Maxwell, London, p.84
[3] *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 1 All E.R. 630

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	management and improper internal control.	determine, based on the third party's conduct, whether there is a breach of trust.
Execution of documents by company, execution of deeds by company, and execution of deeds and other documents by attorney for company		
Clauses 3.66 to 3.68	● It would be useful to clarify the procedures by which foreign companies may execute documents (in particular, deeds) governed by Hong Kong law as there is currently uncertainty in this area. In particular, it would be useful to follow the practice under the UK law that a document may be executed by a foreign company either under that company's seal or in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company.	● The execution requirement applicable to a foreign company is governed by the law where the company was incorporated. Provisions under Subdivision 2 of Division 7 of Part 3 and, in the case of deeds, section 20 of the Conveyancing and Property Ordinance (Cap. 219), set out the relevant requirements for the companies incorporated in Hong Kong.
Unlimited company may apply for re-registration as company limited by shares		
Clause 3.69	● There is absence of provisions that enable a private or public limited company to be re-registered as unlimited; and provide for an unlimited company to be re-registered as a company limited by guarantee without share capital.	● According to the CR's experience, we do not anticipate any re-registration of limited companies to unlimited companies or unlimited company to company limited by guarantee.
Application for re-registration		
Clause 3.70	● There is no time limit for an unlimited company to file the necessary documentation with the CR consequent to its re-registration as a private company limited by shares under clause 3.70 nor any penalty provision if the company has	● The re-registration will not be valid if the necessary documents have not been delivered to the Registrar. Thus, there is no need to impose any time limit or

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	failed to do so.	penalty.
Share Capital		
Part 4	● The capital duty payable by the company upon the abolishment of par value, if any, in relation to the issue of new shares shall be subject to a cap of $30,000 per case as at present.	● Upon migration to the no-par regime, the capital duty will be levied on the amount of issued capital and will continue to be subject to a cap of $30,000 per case.
No nominal value		
Clause 4.2	● A no-par regime is not desirable in a regulated financial market.	● Having made reference to overseas experiences and given the majority support in the topical public consultation conducted in 2008[4] and no strong objection in this consultation, we will adopt the no-par regime.
	● Instead of a mandatory system of no-par, companies should be given the freedom to opt in or opt out for par value as they see fit.	● In the topical public consultation conducted in 2008[4], the majority view supported the proposal to adopt a mandatory no-par system. In this consultation, there is no strong demand for an optional no-par system. In order not to complicate the law, we intend to

[4] In 2007 and 2008, three topical public consultations were conducted, covering:-

(a) accounting and auditing provisions;
(b) company names, directors' duties, corporate directorship and registration of charges; and
(c) share capital, capital maintenance regime and statutory amalgamation procedure.

The consultation paper, views received and consultation conclusions of the three topical consultations conducted in 2007 and 2008 can be found at http://www.fstb.gov.hk/fsb/ co_rewrite/eng/pub-press/pub-press.htm

Clause No.	Summary of Respondents' Comments[Note]	Our Response
		proceed to adopt a mandatory no-par regime.
Denomination of shares		
Clause 4.3	● All shares trading of companies registered in Hong Kong under the Hong Kong Companies Ordinance and/or listed in Hong Kong Stock Exchange must be denominated in Hong Kong dollars. The use of foreign currency denomination will weaken the pegged currency status of the Hong Kong Dollar.	● We do not consider that foreign currency denomination of shares would weaken the pegged currency system. There is no strong demand to restrict the currency denomination. Further, currency denomination should not be an issue in a no-par regime since there will be no minimum price for a share to be issued.
	● It is questionable whether a company's shares actually have a currency of denomination in a no-par value share system, for there will be no minimum price for a share to be issued; and that the amount of share capital shown in a company's statement of financial position is determined by its functional currency (and presentation currency, if different) as established under applicable accounting standards. As such, clause 4.3 should not be necessary.	● Currently, the law is silent on this aspect although there are professional firms filing on behalf of their clients with the CR resolutions about redenomination of shares. To clarify the situation, we will expressly provide in the CB that a company may redenominate its share capital in another currency and after the redenomination, the company has an obligation to report the change to the CR (please see clauses 4.40 and 4.41). This is because under a no-par regime, a "share" has no nominal value to be redenominated but the "share capital", which is an amount, may be denominated and redenominated at different currencies. Consequently, clause 4.3 will be omitted.
Repeal of power to issue share warrants		

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Clause 4.7	● Some jurisdictions (such as the British Virgin Islands) have a registration and approved custodian depositary requirement to handle bearer certificates. This could be an acceptable half-way alternative that the Administration can consider.	● It would be more desirable to completely repeal the power to issue "share warrants to bearer" from the perspective of anti-money laundering.
Exercise by directors of power to allot shares or grant rights, and allotment of shares or grant of rights with company approval		
Clauses 4.8 and 4.9	● Company's approval for allotments of shares or grant of rights should not be required for private companies.	● To protect shareholders' interest, we consider it prudent to continue to require company's approval for allotment of shares or grant of rights for private companies.
Registration of transfer or refusal of registration		
Clauses 4.19 and 4.26	● In certain extreme situation, the company may not be able to register the transfer within two months though it has no intention to refuse the registration of the share transfer. There should be a third option for the company to issue a notice to the transferee confirming receipt of the request for share transfer and stating that he will be notified of the decision within a certain number of days/months.	● The two-month requirement broadly follows the existing requirement for transfer of shares under section 69 of the CO. We are satisfied that a two-month period should be optimal and sufficiently long for bona fide share transfers or if the right to shares is transmitted to a person by operation of law.
Replacement of listed companies' lost share certificates		

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Clauses 4.31 to 4.37	● The requirement of publishing notices in the Gazette and newspapers should be abolished in entirety. Instead, details of the replacement of lost certificates should be published on the websites of the company and the Stock Exchange or other approved mediums.	● For lost certificates where the value is below the threshold amount, we will abolish the requirement to publish notice in newspapers, and instead require notice to be placed on the company's website. We will also reduce the number of notices (for shares which value exceeds the threshold amount) to be placed in the Gazette from three to one.
	● As for the notice publication channels, it is proposed to include use of the website of the relevant company's share registrar.	● The requirement to place notice on the company's website should be sufficient for disclosure purpose.
	● Posting of notices relating to lost share certificates on the website of the Hong Kong Stock Exchange or the Federation of Share Registrars should be allowed to substitute publication of notices in the Gazette, in order to further bring down investors' costs for obtaining replacement share certificates.	● To ensure sufficient protection to shareholders, we propose to keep in the CB the requirement to place notice in the Gazette for shares which value exceeds the threshold amount.
	● The threshold amount for publishing the notices in the Gazette should be increased to a higher level ($200,000) to justify costs for obtaining replacement share certificates.	● We agree, and will raise the threshold to $200,000 as suggested.
Permitted alteration of share capital		
Clause 4.38	● For consolidation of shares, there seems to be no provision equivalent to clause 4.38(4) (applicable in a subdivision of	● Unlike subdivision of shares, it might not be practical to maintain pre-existing proportion in

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	shares) to maintain the proportion between the amounts paid and unpaid on the new shares.	consolidation cases. Upon reconsideration, we will provide in the CB that in converting shares into a larger (i.e. subdivision) or a smaller (i.e. consolidation) number of shares, the amount unpaid will be equally divided in replacement shares.
Classes of shares and class rights		
Division 7 of Part 4	● Under the existing case law, it is established that both the first and third categories of rights described in paragraph 20, Explanatory Notes on Part 4 of the consultation paper constitute class rights. The first and third categories should continue to be regarded as class rights. It is unclear from the proposed drafting whether the third category of rights is excluded.	● There is no strong demand to include the third category. Thus, it is our intention to exclude this category and the current drafting reflects this intention.
Statement of capital		
Clause 4.69	● The contents of a statement of capital are covered by clause 4.69 and clause 3.7. It would be preferable to have only one clause in the CB governing the contents. Between the two clauses, clause 4.69 is preferred.	● We agree, and will standardise the requirements.
Solvency test		
Clause 5.3	● The solvency requirement should be modified to include a balance sheet solvency test, covering both current and total assets/liabilities. This would provide a more comprehensive	● We consulted the public on whether the solvency test should be modified to include a balance sheet test in the topical public consultation conducted in 2008[4].

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	and objective approach to the assessment of solvency and a better safeguard for creditors.	Having considered the views received, we decided not to introduce a balance sheet test. There was no strong demand in this consultation for a balance sheet test.
Solvency statement		
Clause 5.4	● A "full board certification" requirement may be counterproductive for any director may refuse to provide certification, whether out of groundless fear or educated caution. This way, few companies may be able to benefit from the simplified procedures.	● The requirement follows the existing requirement in section 49K of the CO for buy-back by private companies out of capital to provide sufficient safeguard. In Part 5 of the CB, all directors will be required to make the solvency statement for reduction of capital and buy-back out of capital.
Reduction of share capital		
Division 3 of Part 5	● The law should make clear that a reserve arising from a reduction of share capital by any lawful means is a realized profit available for distribution, same as the current position under the UK company law.	● We agree, and will revise the CB accordingly.
Solvency statement		
Clause 5.12	● More time should be given to members to consider the solvency statement if a physical members' meeting will be held to approve the solvency statement.	● The requirement under this clause broadly follows the existing procedures for buy-back by a private company out of capital which has been working well over the years. Thus, we do not propose to amend it.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Solvency statement, and special resolution and application to court for confirmation of reduction of share capital		
Clauses 5.12 and 5.22	● Under the CO, unlimited companies are able to reduce their capital by special resolution of the company without court confirmation. There is no need for a protective mechanism such as a solvency statement or a court confirmation for unlimited companies, as their members are already subject to unlimited liability.	● We agree, and will revise the CB accordingly.
Public notice of reduction of share capital		
Clause 5.14	● Clause 5.14(1) requires the company to publish notice in the Gazette within one week after the date of special resolution for reduction of share capital. The one week period is quite tight because the Gazette is only published every Friday and should be relaxed to give companies more reasonable time to arrange for publication in the Gazette.	● We agree, and will amend the CB to require the notice be published in the Gazette within the week following the week in which the special resolution has been passed, in view of the publication cycle of the Gazette.
	● Clause 5.14(2) requires serving written notice on each of its creditors. However, there are cases in which creditors cannot be located, disappeared or have been dissolved. Therefore, serving notice to their last known address should be sufficient.	● Under clause 5.14(2), apart from giving written notice to creditors, a company can also choose to publish a notice in newspapers. This would address the said cases.
Public notice of reduction of share capital, and application to court by members or creditors		
Clauses	● It is too wide to allow a member of the company to apply to	● The objection arrangements follow those in the CO

Clause No.	Summary of Respondents' Comments[Note]	Our Response
5.14(1)(d) and 5.16	the Court of First Instance for cancellation of the special resolution without some sort of threshold. In addition, in making a solvency statement, the directors would have had already taken into account the interests of creditors before the resolution is put to the shareholders, it is thus not necessary to give creditors a right to object.	concerning buy-back by private company out of capital. It would be prudent to maintain the arrangements so as to give sufficient safeguard for members and creditors.
Offence in connection with creditors list		
Clause 5.24	● As contravention will result in a fine and imprisonment, the offence should not be extended to "reckless" concealment or misrepresentation, as a fine would be sufficient penalty for such.	● We propose to also cover reckless concealment or misrepresentation, for such conduct could seriously jeopardise the interest of the creditors of the company. The fine and imprisonment punishment is but the maximum penalty. The court has discretion to consider circumstances of individual cases in deciding on the exact level of penalty.
Registration of order, minute and return		
Clause 5.26	● If a company applies to the court to reduce share capital under clause 5.22 and the court makes an order under clause 5.25 to confirm the reduction, the company must file a return with the CR within a specified period giving details of the reduction of capital under clause 5.26. However, there is no penalty for failure to file this return.	● Pursuant to clause 5.26(4), a special resolution for reduction of share capital will not take effect until the return is filed with the CR. Therefore, there is no need to impose a penalty for failure to do so.
	● There are no provisions equivalent to the publicity provisions in Division 4 regarding share buy-backs, i.e. clause 5.56,	● The difference in disclosure requirements could be justified for the reduction of capital under Subdivision

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	which provides for public notice of payment out of capital, and clause 5.57, which provides for inspection of the special resolution and solvency statement at a company's registered office or a place prescribed by regulations.	3 of Division 3 of Part 5 is subject to court's supervision and creditors can object to the reduction. There is also merit not to impose further disclosure requirement in order to simplify the procedures.
Issue of redeemable shares		
Clause 5.29	● There does not seem to be prohibition against issue of redeemable shares in contravention of this Subdivision. It should be made clear that a company may only issue redeemable shares if it complies with this Subdivision.	● The clause follows section 49 of the CO in substance, and is in line with UKCA 2006 which does not prescribe prohibition either. ● Issue of redeemable shares under this Subdivision is subject to clause 5.29(2) and 5.29(3). A company that has failed to observe the two sub-clauses would be subject to civil claims by those whose interests are prejudiced.
Terms, conditions and manner of redemption		
Clause 5.30	● Amendments to AA are generally approved by special resolutions under current legislation. Change suggested by the CB to relax the requirement to "ordinary resolution" needs to be justified.	● The proposed change is based on section 685(2) of the UKCA 2006. ● Under this clause, the articles could be amended by ordinary resolution only to the extent that the resolution authorises changes to the terms, conditions, etc., of a redemption, but not beyond. For this purpose, an ordinary resolution should be sufficient authorisation.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Payment for redemption or buy-back		
Clause 5.52	● In respect of redeemable shares, section 686(2) of the UKCA 2006 allows the terms of redemption to provide for the company and the holder of the shares to agree that payment may be made on a date later than the redemption date. A similar relaxation should be made in clause 5.52.	● The arrangement under clause 5.52 is based on the current requirement under section 49(3) of the CO. We propose to adopt the same in the CB as it provides clarity and certainty on the redemption arrangement.
	● In respect of unlimited companies, it is questionable whether there is necessity for a solvency statement when the payment is made out of capital, given that their members have unlimited liability.	● We agree, and will revise the CB accordingly.
	● It is questionable why clause 5.52(1) should apply to an unlimited company to make it pay for its shares on the day of redemption or buy-back. The provision in section 691(2) of the UKCA 2006 for payment to be made on buy-back only applies to limited companies. Similarly, section 686(2) and (3) of the UKCA 2006 only applies to a limited company's redeemable shares.	● We agree, and will revise the CB accordingly.
Public notice of payment out of capital, and inspection of special resolution and solvency statement		
Clauses 5.56 and 5.57	● Unlike the provisions regarding reduction in share capital, there is no requirement to file return with the CR for share buy-backs.	● The requirement to file return with the CR is set out in clause 5.66.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Public notice of payment out of capital, and application to Court by members or creditors		
Clauses 5.56(1)(d) and 5.58	● It is too wide to allow a member of the company to apply to the Court of First Instance for cancellation of the special resolution without some sort of threshold. In addition, in making a solvency statement, the directors would have had already taken into account the interests of creditors before the resolution is put to the shareholders, it is thus not necessary to give creditors a right to object.	● The objection arrangements follow those in the CO concerning buy-back by private company out of capital. It would be prudent to maintain the arrangements so as to give sufficient safeguard for members and creditors.
Financial assistance for acquisition of own shares		
Division 5 of Part 5	● There is no requirement to file return with the CR for financial assistance. ● There are no equivalents to the publicity provisions in Division 4 regarding share buy-backs.	● Strictly speaking, financial assistance is not part of the capital maintenance regime, thus it is not strictly necessary to apply to it all the requirements applicable to reduction of capital and buy-back. We propose in the CB to dispense with the filing and publicity requirements for financial assistance with a view to streamlining the regime.
Consequences of failing to comply with Division		
Clause 5.72	● Contravention of section 47A of the CO concerning provision of financial assistance should not be regarded as innocuous transactions, as stated in the consultation paper. If a company gives financial assistance in contravention of clause 5.71, the validity of the financial assistance and any contract	● Clause 5.72 is not intended to nullify bona fide transfer of shares because of breach of financial assistance rules. Rather, it aims to minimise market disruption in trading and transfer of shares, especially for those of listed companies.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	or transaction connected with should be annulled and subject to a penalty imposed under clause 5.71(3).	
Financial assistance not exceeding 5% of shareholder funds, financial assistance with approval of all members, and financial assistance by notice to members		
Clauses 5.79 to 5.81	● It should be clarified whether the "whitewash procedures" would permit financial assistance to be given by a subsidiary where the acquisition of shares is or was an acquisition of shares of its listed parent company.	● Under clauses 5.79 to 5.81, a company may use the "whitewash procedures" for the purpose of giving financial assistance to acquire shares of "the company or its holding company". The procedures are equally available to a company, regardless of whether the company or its holding company is listed.
	● The solvency statement and a statement containing the text of the notice to shareholders should be required to be delivered for filing with the CR.	● The current safeguards should be sufficient. We are inclined not to unduly complicate the procedures.
Financial assistance not exceeding 5% of shareholders funds		
Clause 5.79	● The 5% threshold causes difficulty in valuing contingent liabilities (such as guarantee) incurred by the company giving financial assistance.	● The term "financial assistance" as defined in clause 5.70(1) includes "guarantee" (please see clause 5.70(1)(b)(i)). ● We will amend clause 5.79 to clarify the meaning of "financial assistance that…has not been repaid" (clause 5.79(1)(c)) in the case of guarantee and security.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	● It is unclear how the rule works where financial assistance is given by way of security; and whether a company can give security over assets worth 5% of shareholder funds at that time.	● The term "financial assistance" defined in clause 5.70(1) includes "security" (please see clause 5.70(1)(b)(i)). The 5% limit under clause 5.79 refers to the amount secured by the mortgage or charge, etc., instead of the value of the assets used as security.
	● The meaning of "fair value" in clause 5.79(1)(d) is unclear. This may not be applicable in the acquisition finance context where subsidiaries are usually expected to provide guarantee or security in respect of an acquisition of shares in its parent company. The meaning of "fair value" should be clarified where financial assistance is given by way of security.	● The "fair value" requirement is a safeguard to protect the interest of shareholders under which the directors, in exercising their fiduciary duties, and upholding the principle of corporate benefit, must be able to justify that the giving of the financial assistance would benefit the company. The exact elements constituting "fair value" will be subject to the arrangements of individual transactions.
	● Financial assistance which benefits directors and their associates should be carved out.	● Such cases will be subject to the rules governing the directors' fiduciary duties; and for listed companies, also rules governing connected party transactions under Chapter 14A of the Main Board Listing Rules.
Financial assistance with approval of all members		
Clause 5.80	● It would be too onerous to obtain a "written resolution of all members". The requirement should be replaced by "special resolution".	● "Written resolution of all members" is one of the three permitted procedures for giving financial assistance. The permitted procedures provide alternatives to suit different companies' situations. Where a company finds it too onerous to obtain a "written resolution of all members", it may resort to

Clause No.	Summary of Respondents' Comments[Note]	Our Response
		the alternative set out in clause 5.81, which will be amended to reflect the requirement of an ordinary resolution by a company.
Financial assistance by notice to members, and application to court for restraining order		
Clauses 5.81 and 5.82	● To allow any member to apply to the Court of First Instance for a restraining order is too harsh and would not simplify this process. This should either be (a) removed; or (b) amended such that members may give notice of their objection to the company and, only members holding 5% or more of the company's share capital may be allowed to object.	● Concern noted. Upon reconsideration, we propose to amend the clause so that members holding not less than 10% voting rights (if the company is limited by shares) may apply to the court to restrain the giving of the financial assistance. ● The above proposed amendment is similar to the requirement under section 47G(2) of the CO.
	● A standardised form of notice to shareholders should be given and suggested that the form should be that referred to in clause 5.81(1)(c).	● The two notices respectively under clause 5.81(c) and clause 5.79(3) are different in nature, with the former a pre-transaction notice and the latter a post-transaction notice. A standardised form is not warranted.
Distribution of profits and assets		

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Part 6	● Distribution should only be subject to the solvency test and the concept of realized profits should be adopted.	● We will maintain the current regime as the majority view in the topical public consultation conducted in 2008[4] agreed that the solvency test approach to creditor protection should not be adopted across the board, and there is no strong demand for a solvency test for distribution in this consultation.
	● The CO does not provide any guidance as to how to value a distribution in-specie. This issue should be clarified along the lines of section 845 of the UKCA 2006.	● We have considered the issue but noted that there has been no major problem in this area in Hong Kong. As such, we are inclined not to adopt provisions similar to section 845 of the UKCA 2006.
Realized profits and losses		
Clause 6.2	● Would like to know the rationale behind the draft bill's recommendation that profit made before 1 September 1991 be treated as realized but loss unrealized.	● This is a restatement of the concessions afforded to companies under the current law, upon the introduction of Part IIA of the CO in 1991.
Prohibition on certain distributions		
Clause 6.6	● Would like to know why the prohibition is only applicable to realized losses but not unrealized losses.	● This is a restatement of the current law and there is no strong demand for change.
	● One-third of realized profits should be required to be distributed as dividends to shareholders as in the case of People's Republic of China, and that staff costs be restricted to below one-third of realized profits or designated levels	● Companies have not been subject to such requirements. There is no indication of demand for such changes and therefore we would not propose to

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	with reference to minimum wage level.	make such fundamental changes.
Justification of distribution by reference to financial statements		
Clause 6.11	● Where a distribution proposed or approved before it has actually been made, and a certain event occurs which may change the opinion regarding the financial ability of the company concerned, provisions should be put in place to address such situation.	● Should such situation arise, a director would be bound by his fiduciary duties to reconsider the distribution.
Last annual financial statements specified for purposes of section 6.11		
Clause 6.13	● It is burdensome for a holding company that intends to distribute its profits and assets to be required to prepare its own annual financial statements (under Part 6) in addition to the consolidated financial statements of the group (under Part 9).	● Concerns noted. We will amend clause 6.13 so that the consolidated financial statements prepared by a holding company for the group under Part 9 will be the annual financial statements under clause 6.13. ● It is considered that the statement of financial position (i.e. the balance sheet) of the holding company required to be contained in the notes to the consolidated financial statements can be relied on for distribution purpose under Part 6.
Interim financial statements and initial financial statements specified for purposes of section 6.11		
Clauses 6.14 and 6.15	● It appears that the requirement for such financial statements to give a true and fair view may have become an overriding requirement, irrespective of whether the additional	● Concerns noted. We will amend the CB to clarify that the interim and initial financial statements respectively under clause 6.14 and clause 6.15 should

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	information included in those financial statements is pertinent to the question of the legality of the distribution. ● Directors' declaration and the auditors' report accompanying the interim and initial financial statements prepared for the purposes of sections 6.14 and 6.15 should mirror the wording in sub-sections 6.14(3) and 6.15(2), i.e. stating whether the financial statements have been properly prepared in accordance with the Ordinance, except only in relation to matters that are not material for the purpose of determining, by reference to the financial items as stated in those financial statements, whether the distribution would be in contravention of the Ordinance.	be prepared in accordance with Part 9 of the CB (specifically, Subdivision 3 of Division 4 of Part 9), except for such matters which are not material for determining the distributable profit and that the financial statements may not cover a full financial year. ● Part 9 embodies generally a requirement for the financial statements to give "true and fair view," thus it is not necessary to repeat the same requirement in Part 6 on distribution. ● The requirement for the directors' declaration will also be removed.
Place where register must be kept available for inspection		
Clause 7.3	● Contravention of requirements for the register of debenture holders to be kept for inspection is escalated by clause 7.3(4) to be a criminal offence. Further consideration should be given as to whether such escalation is proportionate. Instead, contravention of requirements under clause 7.3(4) could be addressed by clause 20.4 under which the Registrar may give a notice requiring the company or officer to comply with the requirements.	● The offence under clause 7.3(4) is not a new offence, and can be found in section 74A(4) of the CO for contravention of requirements under sections 74A(2) and 74A(3) which are restated in clause 7.3(1) and 7.3(2) in the CB.
Registration of transfer or refusal of registration		

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Clause 7.18	● If a company must give reasons for refusing to transfer shares, it will be necessary to make consequential amendments to clause 7.18 regarding registration of transfer or refusal of registration of debentures or debenture stock.	● Unlike shares, title to debentures does not, as a general rule, depend on registration and hence the same requirement would not apply to debentures.
Court may order meeting of debenture holders		
Clause 7.28	● The proposal to allow debenture holders to apply to the court to order a meeting to be held to give directions to the trustees is not agreeable. The provisions concerning meetings of debenture holders should be governed by the debenture documentation.	● Clause 7.28(3) provides that the right of a person to apply to the court for a meeting of debenture holders may be excluded by the debentures, or the trust deeds or other documents securing the debentures. This should have addressed the concern.
	● Amendment is suggested to clarify whether clause 7.28 would still apply where the debenture is part of a series.	● Clause 7.28(1) specifies that clause 7.28 applies to all debentures that form part of a series that are of equal ranking with the other debentures of that series or debenture stock.
Specified charge		

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Clause 8.3	● All charges ought to be registrable, because that is the only way in which a person searching the register will get the full story. If there are particular cases where it is inappropriate for registration to take place, specific exceptions can be made. ● The obligation to register charges should be extended to all types of mortgage or charge created by a company over its assets, irrespective of the nature of the asset over which they are created.	● We consider that it is not appropriate to adopt the negative listing approach as suggested, for the following reasons:- (a) in complex financial transactions, charges not intended to be registrable may be inadvertently caught; (b) the current positive listing approach has been working well over the years and is familiar to practitioners who do not seem to have had encountered any major problems; and (c) it does not offer any effective solution to the problem arising from the listing approach (e.g. the definitional problems), nor does it effectively eliminate the need to update the list wherever some new exception emerges.
	● Charges over cash deposits should not be excluded from the list.	● We consider that charges over cash deposits should be excluded for reasons as set out in the consultation document[4].
	● Charges over insurance policies should be registrable.	● In the topical public consultation conducted in 2008[4], the majority view supported not to make charges over insurance policies registrable. In this consultation, there was no strong demand to make them registrable.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	● Charges over credit bank balances should be registrable as many lenders prefer to take a charge rather than relying on a right of set-off.	● Such a charge can still be created and enforced. Making the charge non-registrable simply means that the registration requirements in the CB do not apply.
	● The consultation paper does not address charges over bank accounts which are given to support the obligations of a third party.	● This is covered by clause 8.3(3)(b).
	● Where a security document charges shares presently within the portfolio and any other shares from time to time forming part of that portfolio, it should be sufficient if the original security document is presented for registration, provided that it adequately describes the assets charged or that might be brought into charge by it. The same principle should apply to any charge over a present and future class of assets where some act may be required to bring the asset into charge.	● If the future asset comes within the existing registered charge (e.g. a registered floating charge), there is no need for further registration as long as no new charge is created.
Requiring the charge instrument to be registrable and available for public inspection		
Clauses 8.4(1) and (2), 8.5(1) and (2), 8.7(2), 8.8(3), 8.9(2) and (3) and 8.14(4)	● It is unnecessary for the charge document to be placed on public record, as it would only make available information to parties who are not exposed to the credit of the relevant company, and who are not privy to the terms of the charge.	● In the topical public consultation conducted in 2008[4], the majority of the respondents supported the proposal to register both the instrument of charge and prescribed particulars. In this consultation, there is no demand to reverse the proposal.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	● Should allow electronic delivery of charge document to the Registrar for registration.	● We will consider in due course the option of electronic delivery.
	● It is not necessary to state the amount secured or whether the charge is fixed or floating, if the whole charge is on the register. The precise particulars of the property charged are not necessary.	● The particulars of charges to be included in the "statement of the particulars of the charge" under the CB will be simplified as appropriate.
	● The charge document should not be made available for public inspection, for there might be details on arrangements, e.g. pricing, that are confidential between a creditor and chargor (e.g. between a bank and its customer).	● Any commercially sensitive information may be contained in a document separate from the charge deed. This can address the concern.
	● The deed of discharge should not be made as a registered/public document. Once the charge has been discharged, there would be no need for a deed of discharge to be made available for search.	● For consistency in filing charge instruments with the CR for registration, the deeds of discharge are also registrable.
A certified copy of the charge instrument and written evidence of debt satisfaction/release of a charge to be delivered for registration		
Clauses 8.4(1) and (2), 8.5(1) and (2), 8.7(2), 8.8(3), 8.9(2) and (3) and 8.14(3)(c)	● For the sake of continuity with current practice, originals should continue to be accepted by the Registrar.	● At present, the original of a charge instrument has to be delivered to the Registrar, but where the charge is created by the company out of Hong Kong comprising property situated outside Hong Kong; or where the charge is existing on property acquired by the company, a copy would suffice. ● Under the CB, we consider it desirable to align with

Clause No.	Summary of Respondents' Comments[Note]	Our Response
		the latter practice, i.e. only a certified copy of the charge instrument is required to be submitted to the Registrar.
Shortening the period for delivery to the Registrar of the charge instrument and the prescribed particulars from five weeks to 21 days		
Clauses 8.4(5), 8.5(6), 8.7(3), 8.8(4), 8.9(5), 8.10(4) and 8.11(6)	● Borrowers would have concern over the shortening of the period. ● A period longer than 21 days should be allowed for charges that are executed outside of Hong Kong, and that the 21-day period would start to run when the charge document has arrived in Hong Kong rather than the date on which it was signed. ● The current five-week period is a maximum period and charge holders/companies could be encouraged to register earlier than this. A shorter period than this should not be prescribed in the CB.	● In the topical public consultation conducted in 2008[4], the majority view supported the proposal to shorten the period for delivery to 21 days. ● Upon further consideration of the views received in this consultation, we will extend the period from 21 days to one month.
Consequences of contravention of section 8.4 or 8.5		
Clause 8.6(6)	● In most cases it is the lender's counsel to take up the responsibility to effect registration. A statutory conversion of a term loan into a loan which is repayable on demand arising from omission of the lender or its counsel would be unfair to borrowers.	● Clause 8.6(6) of the CB improves section 80(1) of the CO so that lenders have a choice to accelerate the loan upon non-registration of a registrable charge.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Registrar must acknowledge receipt of documents delivered for registration		
Clause 8.13(2)	● The Registrar should continue to issue a conclusive certificate of due registration, instead of replacing it with issue of an acknowledgement receipt. ● The certificate should be retained for it is conclusive as to compliance with the registration requirements and the date of compliance. ● With the proposal, the register will cease to provide legal and conclusive evidence that a charge has been properly registered. This represents a significant change in terms of the reliance that may be placed on the register.	● Upon consideration of the concerns, we will not proceed with the proposal for the Registrar to issue an acknowledgement receipt. The issue of a certificate of due registration will be reinstated in the CB.
Notification to Registrar of payment of debt, release, etc.		
Clause 8.14	● A Form M2 signed by the chargee should continue to be sufficient evidence of release, without further underlying documentation.	● The deed of release or discharge is the primary evidence of release or discharge and is preferred over Form M2. This also helps remove the current procedural distinction made in relation to which party (the chargee or the chargor) that lodges Form M2.
Extension of time for registration and rectification of registered particulars		
Clause 8.15	● Extending the powers for rectification of the underlying instrument is not necessary. Rectification of the underlying instrument should be dealt with under the general common	● The purpose of extending the powers of the Court to rectify the registered underlying instrument is to provide a platform to allow an omission or

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	law mechanisms for rectifying contracts.	misstatement in the registered instrument as recorded in the public register be rectified. ● The proposed power of rectification by the Court of First Instance will be subject to the extent as permitted by common law rules and equitable principles.
Aligning the statutory accounting requirements with accounting standards		
Part 9	● The proposal for alignment between the statutory accounting requirements with accounting standards is not necessary. Codification of the complicated accounting standards will defy the principle of law being predictable.	● Our intention is to minimise the potential conflicts between the statutory accounting requirements and the accounting standards. We will avoid incorporating evolving accounting standards in the legislation.
"Responsible person"		
Part 9	● The term "every responsible person" is too vague for imposition of a criminal offence and for compliance with the Hong Kong's Bill of Rights. The concept of "every responsible person" should be replaced by "every officer in default" as currently used elsewhere in the CO.	● We consider that there are deficiencies in the current formulation of "officer who is in default" as:- (a) it does not cover negligence of officers; and (b) where a company having a corporate officer commits an offence, the current formulation does not punish any officer or shadow director of such a corporate officer who has caused the corporate officer to be in default. ● "Responsible person" is defined in the CB Part 1

Clause No.	Summary of Respondents' Comments[Note]	Our Response
		clause 1.3.
Commencement		
Part 9	● The commencement date should be set, say 18 months after the CB is enacted.	● Given the need to prepare necessary subsidiary legislation, we expect that the CB will commence 18 to 24 months after its enactment.
	● A company should have the option to choose "early adoption" of Part 9 (as enacted) for the financial year that ends after the commencement date of Part 9.	● To avoid confusion, we do not propose that a company should have the option to elect early adoption of Part 9.
Financial year		
Clause 9.11	● It is questionable whether there is need for the provision which allows the company's directors to alter the last day of the financial year by plus or minus seven days. Such flexibility would create difficulties in the year-on-year comparisons of the financial statements of the company and might cause confusion to the shareholders and other users of the financial statements.	● The proposal reflects the consultation conclusions of the topical public consultation conducted in 2007[4] which consider the flexibility appropriate.
Company must keep accounting records		
Clause 9.18(2)(b)	● This sub-clause does not stipulate a particular timeframe under which the company's accounting records must be able to disclose its financial position and financial performance.	● Comments noted. We will amend clause 9.18(2)(b) accordingly.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	Section 386(2)(b) of the UKCA 2006 requires that the accounting records should be able to make such disclosure at "any time".	
Directors must prepare directors' report		
Clause 9.29	● Directors' duties and company reporting are mutually reinforcing and should go hand in hand. The CO should make reference to the relevant UK provisions and must include clarifications requiring directors, as part of their duty to the company, to consider the company's social and environmental impacts. Stakeholders must have access to relevant information so that they can assess whether such duty has been fulfilled.	● In the topical public consultation conducted in 2008[4], views on this issue were highly divided. Our current proposal seeks to strike a balance among the different interests of various stakeholders.
Auditor's opinion on financial statement, directors' report, directors' remuneration reports, etc.		
Clause 9.50(3)	● Since the directors' report includes analytical and forward looking information which is subjective in nature, requiring an auditor to opine whether the information is consistent with financial statements may necessitate subjective judgement.	● It depends on an auditor's judgment whether the information in the directors' report is consistent with the financial statements.
Offences relating to contents of auditor's report		
Clause 9.52	● It is questionable whether it is necessary to impose criminal sanctions given Hong Kong Institute of Certified Public Accountants' power to discipline auditors.	● There is no conflict between the offence provisions in the CB and the disciplinary mechanism under the Professional Accountants Ordinance (Cap. 50) (PAO).

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	● It is unclear whether an offence under clause 9.52 of the CB is a summary or indictable offence. If it is the former, then the prosecution must be completed within six months of the date of offence (i.e., the audit report date), while it would be quite impossible for criminal investigation of such matters to be completed within six months. On the other hand, under the PAO, there is no similar statutory time limit. Therefore, it may be more appropriate to pursue misconduct proceedings under the PAO.	● The offence under clause 9.52 is a summary offence for enforcement against non-compliance with the requirements in relation to contents of the audit report. It is a separate and distinct offence that would be enforced independently from the misconduct proceedings pursued under the PAO, and thus should be retained.
	● The issue of materiality is not referred to in clause 9.51 of the CB. Therefore, it appears that an auditor may be required to report even where the difference is small or insignificant.	● Concern noted, and we will amend the CB accordingly.
	● It is not entirely clear from the wording of the CB whether the engagement partner or other persons involved in an audit could be held vicariously liable for knowing or reckless actions by an employee of the firm. This would not be justifiable, unless it can be proved that the engagement partner or other persons in question had themselves acted knowingly or recklessly.	● The provision penalises a person who "knowingly or recklessly" causes a statement to be omitted from the audit report. An engagement partner will not be held vicariously liable for the actions/ omissions of his or her employee under this provision unless the engagement partner himself causes the omission knowingly or recklessly.
Cessation statement and statement of circumstances		
Clauses 9.66 to 9.69	● The proposal to improve transparency on the circumstances of cessation of office of auditor should only apply to public companies.	● The objective to improve transparency is applicable to all companies, as at present under the CO (please see sections 132, 140A and 140B).

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Duty of resigning auditor to give statement		
Clause 9.68	● For an auditor who resigns, there should be offence under clause 9.68 for not giving the company a statement of circumstances.	● For an auditor who fails to provide the required statement under clause 9.68, his resignation will be invalid. Thus, it is not necessary to impose an offence.
Duty of resigning auditor to give statement, and duty of auditor who retires or is removed to give statement		
Clauses 9.68 and 9.69	● There should be a clear requirement in all cases of an auditor ceasing to hold office for the auditor's statement of circumstances to be filed with the Registrar. In order to facilitate regulatory oversight of changes in auditors, an outgoing auditor's statement of circumstances should be sent to the appropriate audit and financial statements regulators.	● The CB confines the cases in which an outgoing auditor is required to give a statement of circumstances to possible controversial cases, such as resignation, removal and retirement without reappointment only. Clauses 9.70(5)(a) and 9.71(5) already provide for delivery of the statement in such cases to the Registrar. It is considered not necessary to require an outgoing auditor to give a statement in other cases.
Company's and aggrieved person's responses to statement of circumstances, court may order statement of circumstances not to be sent, and offences relating to section 9.71		
Clauses 9.70 to 9.72	● The requirement for filing the statement of circumstances relating to auditor's resignation, retirement or removal should rest with the company secretary or directors of the company.	● The CB provides that the outgoing auditor has to file the statement of circumstances to ensure that it is put on the public register. The requirement is an improvement to section 140A(3)(a) of the CO as the auditor would otherwise have no way to ensure there

Clause No.	Summary of Respondents' Comments[Note]	Our Response
		is public notice of the statement.
Requirement in connection with publication of financial statements etc.		
Clause 9.81	● Non-statutory financial statements should be permitted to include an audit opinion, as the users requiring such statements would usually require some form of assurance from the auditor and without which the usefulness of the non-statutory statements might be limited.	● Clause 9.81(3)(d) sets out that the non-statutory accounts will be accompanied by a statement indicating the auditor's opinion on the financial statements and directors' report in the audit report.
Company may seek members' intent on receiving summary financial report		
Clause 9.87	● It is not clear under clause 9.87(1) when the company may notify every member or potential member to give a notice of intent under clause 9.87(3). The timing of the company's notification should have regard to the timetable in clause 9.87(4) as the response by members in the notice of intent needs to be received at least 28 days before the date on which the reporting documents for the current financial year are sent to members. In addition, it would appear that the company will need to notify members of this option once a year to take account of new members.	● The requirement to ascertain members' intent on receiving a summary financial report under clause 9.87 is entirely optional. As the notification can be sent to existing or potential members, the company is at liberty to decide when is the best time to send the notification according to the circumstances of each case and having regard to the timetable in clause 9.87(4), (5) and (7).
Requirements on consolidated accounts		
Schedule to Part 9	● There is no instruction in Part 9 or its Schedule which is equivalent to paragraph 21 of the 10th Schedule to the CO, that ".... the consolidated accounts shall, in giving the said	● The majority of the provisions in the 10th Schedule (including Paragraph 21) will be removed as it has not been able to keep pace with the significant

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	information, comply so far as practicable, with the requirements of this Ordinance as if they were the accounts of an actual company". Such instruction is necessary to avoid doubt and omission of group audit fees and other disclosures that should be provided on a group basis.	developments in financial reporting as reflected in the Hong Kong Financial Reporting Standards. In lieu thereof, companies are required to prepare financial statements in accordance with the applicable accounting standards under the CB. This approach reflects the consultation conclusions of the topical consultation conducted in 2007[4].
Directors of amalgamating company must notify secured creditors of proposed amalgamation		
Clause 13.15(1)	● It is unclear what the proposed timing is for the giving of notice to secured creditors where an amalgamation is approved by a special resolution passed on a show of hands at a general meeting.	● The special resolution has to be passed on a poll or by a written resolution. Clauses 13.13(4) and 13.14(3) will be amended to make this clear.
Shares to which takeover offer relates		
Clause 13.24	● Sub-clauses (1) and (3) describe shares which are not shares to which the offer relates. Sub-clauses (2) and (4) respectively then set out circumstances when such shares would be shares to which the offer relates. It is difficult to envisage a situation when the shares would ever not_fall within the circumstances in sub-clauses (2) and (4) (i.e. the shares would always be shares to which the offer relates). It is questionable if there would be any situation in which the value of the consideration for acquisition of the shares would exceed the consideration specified in the terms of the offer, or	● We do not see any conflict in these provisions.

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	the terms of the offer not be revised to increase the consideration as a result of the amount paid for the shares acquired (as required under the Takeovers Code Rule 24.1).	
Appointment of inspector on application by company or members		
Clause 19.3	● Unless the scheme of a scripless securities market has been implemented in Hong Kong, the number of members making a request for appointment of an inspector should be reduced from 100 to 50.	● A few submissions offered comments on this in this consultation, and there is more support for maintaining the number at 100. Thus, we are inclined to maintain the number at 100.
Appointment of inspector on application by company or members, and appointment of inspector on Court's or Financial Secretary's initiative		
Clauses 19.3 and 19.4	● The Financial Secretary (FS) is a suitable candidate, but the Administration can consider vesting the power in another appropriate Principal Official.	● We consider it appropriate to continue to vest the power in the FS.
Inspector may require production of records and documents etc.		
Clause 19.9	● There are safeguards to authorized institutions in clause 19.9(3); these safeguards should extend to trustees.	● Similar safeguards do not apply to trustees in Securities and Futures Ordinance (Cap. 571) (SFO) and Financial Reporting Council Ordinance (Cap. 588) (FRCO). We do not propose to extend the safeguards to trustees under the CB.
	● For physical protection of records and documents which the inspector believes may be removed or destroyed, an inspector	● Clause 19.9(1)(b) allows an inspector to require a person to take all reasonable steps to preserve the

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	should be empowered to take action to safeguard such materials.	record or document before it is produced to the inspector.
Provisions supplementary to sections 19.9 and 19.10: powers to require explanation etc.		
Clause 19.11(2) and (3)	● Do not support the new powers under clauses 19.11(2) and 19.11(3) for the extent of verification required and the verification procedures involved are not clear under this clause.	● The verification requirement is to be met by statutory declaration as specified at the end of the two sub-clauses ("to verify….by a statutory declaration), while the subjects to be verified are "the answer, information or explanation" (please see sub-clause (2)) that a person is required to give under clause19.9; or confirmation of "no-knowledge" (please see sub-clause (3)). ● The requirements under the two sub-clauses are similar to the provisions under the SFO (sections 179(3) and (4), and 183(2) and (3)) and the FRCO (sections 27(3) and (4) and 28(3) and (4)).
Offences for failing to comply with requirements under Subdivision 4 etc.		
Clause 19.26	● The threshold for a person to commit an indictable offence in producing a record, document, information or explanation to an inspector which is false or misleading in a material particular, namely recklessness, seems too stringent for companies: intention should be required.	● The thresholds set are based on similar offences under the SFO (section 179(14) and 184(2)) and FRCO (section 31(4) and (5)). ● As the nature of the offences is similar among the CB, SFO and FRCO, we are inclined to adopt a consistent approach.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
Circumstances under which Financial Secretary may enquire into company's affairs		
Clause 19.31	● The threshold for invoking the FS' enquiry power, namely that "it appears to the FS that there is a good reason for doing so", is unclear. Elements of "reasonableness" should be built into the parameters for exercising such power.	● The FS will take into account a number of factors (including consideration of public interest) in exercising such power and will not exercise such power lightly. The wording follows the CO and we do not consider it necessary to amend it.
Registrar may require production of records and documents etc.		
Clause 19.36	● The threshold for the Registrar to invoke new powers, i.e. certifying that she has reason to believe a "specified act" has been done and certain information is relevant to the enquiry and the person is in possession, is too stringent for companies, and arbitrary.	● The new power is only limited for the purposes of ascertaining whether any conduct that would constitute certain offences has taken place, thus the threshold should be optimal. ● There are appropriate restraints built in clause 19.36, e.g. the Registrar needs to give notice in writing and certifies that certain conditions (e.g. reasons to believe an offence has been committed, the information is relevant to the enquiry, etc.) are satisfied before invoking the power.
	● The meaning of "specified act" is too wide. It would allow the Registrar to invoke her power to request further documents and information even in situations where the information filed is incorrect but immaterial. If assessment is not undertaken by the Registrar before invoking her power, companies may have increased administrative burden whilst	● The Registrar will assess the materiality of the information to ensure that the investigatory resources will be appropriately and efficiently applied. Instigation of an enquiry or prosecution will likely be guided by, *inter alia*, public interest.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	the regulatory benefit may not be easily observed.	
Permitted disclosure and restrictions		
Clause 19.44	● It is not clear why information supplied to the Registrar pursuant to her exercise of her new powers is subject to a different degree of confidentiality protection from information obtained by an inspector.	● The Registrar's new enquiry powers are intended to cater for less complicated cases involving less confidential or sensitive information. As such, the confidentiality protection is different from that of the FS' investigation or enquiry.
Protection of informers etc.		
Clause 19.48	● It is supported that further protection for informers by keeping their identity anonymous in appropriate cases. However, discretion to employ these devices must be exercised with great caution to prevent abuse and unjust results.	● We believe that the protection and safeguards provided in clause 19.48 are appropriate and sufficient.
Offence for false statements		
Clause 20.1	● The scope of offence for false statements should not be widened. No changes should be made to the existing provisions under the CO. The proof of wilful intent should be retained.	● We consider widening the scope necessary in order to strengthen the enforcement regime.
	● The suggestion that a person can be liable for "recklessly" making a false statement must be considered with great care,	● We consider that the current body of case law on the interpretation of "recklessness" should be sufficient,

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	for the proposal would convert an offence currently based on subjective intention into one where a person can be judged by objective standards to have been "careless". Any new concept of "reckless" should perhaps be defined as "not knowing or caring whether the statement was true".	without the need to have a statutory definition.
Registrar may give notice to suspected offender about not instituting proceedings under certain conditions		
Clause 20.5	● Clause 20.5(1) should be amended to require that the notice in writing must specify the date on which it is issued.	● Clause 20.5(1)(c) already requires the written notice to specify the period within which the terms of the notice have to be complied with. In any event, the date on which a written notice is issued will be set out in the written notice.
	● The period for payment and rectification of the alleged offence and the sum to be paid be fixed in respect of each of the applicable offences should be specified in the relevant schedule.	● The Registrar will have discretion to determine the period for payment and rectification as well as the compounding fee to be paid taking into account of the circumstances of individual cases.
	● Clause 20.5(4) should be amended to allow a notice issued under clause 20.5(1) to be withdrawn where the Registrar is satisfied that the alleged offence has not been committed.	● If a company disputes over whether the alleged offence has been committed, the company may contact the CR for clarification or objection.
	● It would be reasonable for the compounding fee to be on an escalating schedule for repeated or habitual offences. The Registrar can be further empowered to exercise discretion to reduce the escalated penalty as justice and circumstances	● Under the CB, the Registrar has discretion to consider all relevant factors in determining the amount of compounding fee.

Clause No.	Summary of Respondents' Comments[Note]	Our Response
	might warrant.	
Court may require costs in action by company etc.		
Clause 20.9(3)(a)	● Unlimited companies incorporated in Hong Kong should not be excluded under clause 20.9(3)(a).	● As explained in the consultation paper, we consider that there is good policy reason for excluding unlimited companies incorporated in Hong Kong.
	● Overseas incorporated companies (but with operations in Hong Kong) should not have to give security for costs. There should be a right to order security, but only after carefully examining the target's assets, presence and record in Hong Kong.	● Clause 20.9 empowers the Court of First Instance to order security for costs where appropriate after considering all relevant factors. It will be at the court's discretion to consider whether to so order.
Power to make regulations		
Clause 20.14	● The Administration can consider vesting the power in another appropriate Principle Official.	● We consider it appropriate to empower the FS to make regulations.