



**The British  
Chamber of Commerce  
in Hong Kong**  
香港英商會

10 August 2010

Companies Bill Team  
Financial and Services Treasury Bureau  
15F Queensway Government Offices  
66 Queensway  
Hong Kong

Dear Sirs

**Draft Companies Bill - Second Phase Consultation**

We wrote on behalf of the British Chamber of Commerce in Hong Kong earlier about this important consultation. As you will be aware our Chamber represents a significant proportion of the international and local business community. We are pleased to attach our member's comments on this latest consultation at the Appendix. As you know, our members take a keen interest in this subject and our representatives have attended the Public Consultations on the new Companies Bill rewrite at all stages. We are also happy to attend any further Legco panel on these matters.

If you wish to meet with any of our members to discuss matters in the interim, we shall be happy to arrange a meeting.

Yours sincerely

Brigadier Christopher Hammerbeck CB.CBE.  
Executive Director

Cc: Kevin Taylor – Chairman  
Deborah Annells – Chair Financial Services Interest Group

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## Appendix

### Draft Companies Bill - Second Phase Consultation

#### Question 1

(a) Do you agree that the restrictions on financial assistance should be abolished for private companies?

Yes

(b) If you answer to (a) is positive, which of the following options concerning regulation of listed and unlisted public companies would you prefer –

- (i) existing rules for listed and unlisted public companies in the CO be retained (i.e. listed companies cannot give financial assistance except for certain exceptions as set out in sections 47C and 47D of the CO while unlisted public companies may give financial assistance subject to solvency test and a special resolution of the shareholders (section 47E of the CO));
- (ii) the rules for both listed and unlisted public companies to be streamlined using a solvency test as set out in the draft clauses in Division 5 of Part 5; or
- (iii) any other option (please elaborate),

having regard to the need to protect small investors of public companies?

**We refer option (ii) - streamlined rules for public companies**

(c) If your answer to (a) is negative (i.e. you believe that private companies should still be subject to certain restrictions on financial assistance), do you have any specific comments on the draft clauses in Division 5 of Part 5? Please elaborate.

N/A

#### Question 2

Do you agree that there is no need to impose a statutory requirement in the CB for 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 to prepare separate directors' remuneration reports?

**There is no statutory need for this requirement, in our view.**

#### Question 3

Do you have any comments on the proposed changes to the provisions concerning the investigation of a company's affairs and enquiry into company's affairs that may be exercised by the FS described in paragraphs 4.6 to 4.13, the Explanatory Notes on Part 19 and Divisions 1 to 3 and 5 in Part 19 of the CB?

**We believe the FS should be statutorily enabled to investigate these matters.**

#### Question 4

Do you have any comments on the proposed new powers for the Registrar to obtain documents, records and information as described in paragraphs 4.14 to 4.17, the Explanatory Notes on Part 19 and Divisions 1, 4 and 5 in Part 19 of the CB?

**We also believe the Registrar should be given these new powers to obtain documents, records and information.**

### Question 5

- (a) Do you think the CB should make it obligatory for a company to give reasons explaining its refusal to register a transfer of shares?

**Yes companies should receive explanations for a refusal to register a transfer of shares.**

- (b) If your answer to (a) is in the affirmative, should the company be required to provide reasons with the refusal:

- (i) in the manner of the HKCA 2006 (i.e. mandatory whenever there is a refusal); or
- (ii) upon request, as in the case of transmissions by operation of law under section 69(1A) of the CO?

**We prefer the UK methodology.**

### Question 6

Do you have any comments on the draft provisions in the CB Consultation Draft - Parts 1, 3 to 9, 13 and 19 to 20? If so, please elaborate.

**No further comments; these reflect the outcomes of previous consultations in which we have participated.**

We wish to see these amendments, which are uncontentious, and the new companies ordinance, enacted as soon as possible. We had already provided our overall comments on the First Companies Bill Consultation.