

# Companies ordinance rewrite



**By Simon McConnell  
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The Hong Kong Companies Ordinance (CO) is presently the subject of a 'rewrite'. This will affect many areas of law relating to companies. Draft legislation is expected to be available for public comment by mid-2009. The current phase requires submissions by 30 June 2008 on: company names; corporate directorships; registration of charges; and directors' duties. The main issue for directors' duties is whether the current common law duties should be placed into statutory form, as has happened in other jurisdictions, such as the UK, Australia and Singapore.

The Hong Kong Financial Services and the Treasury Bureau is handling the comprehensive rewrite of the CO. The objectives are to streamline and modernise the provisions making it more accessible to the public, to strengthen Hong Kong's position as an international and financial centre and to bring Hong Kong in line with the recent legal developments in other common law jurisdictions.

These prospective changes will have significant implications for companies and their stakeholders. The Government is seeking public comments on these proposals and the deadline for submissions is 30 June 2008.

**Company names:** Shadow companies have been registering under identical or similar trademarks or trade names to improperly benefit from the goodwill of other companies. A growing number of shadow companies are using Hong Kong trade names to engage in such activities in Mainland China.

The new proposal is to empower the Registrar to act upon a court order to direct the infringer to change its name within the prescribed time.

**Corporate directorship:** Many countries have abolished corporate directorships for the reason that it is difficult to determine the true identity of the delegate of a corporate director and to impose sanctions against any underlying wrongdoer. To improve corporate gov-

ernance and transparency, the Standing Committee on Company Law Reform (SCCLR) recommended the abolition of corporate directorships in Hong Kong, subject to a reasonable grace period.

**Registration of charges:** Under the new proposal, the instrument of charge will be registered in the public register in a prescribed form, containing the information about the company, particulars of the chargee and the date of creation of the charge.

There is also a proposal to shorten the time limit for the registration of charges. It is recommended to follow the UK approach that the current five week registration period be shortened to 21 days to reduce the time in which the charge is invisible to the public. At present, a charge must be submitted to the relevant authority for registration within five weeks of its creation.

**Directors' duties:** The SCCLR is reconsidering whether Hong Kong should codify general director duties. Currently, directors' duties are mainly established under common law principles.

Supporters believe that codification of directors' duties in a statutory form would bring clarity and predictability to the law, which would assist directors to better understand their obligations. However, concerns have been expressed that the development of codified duties in addition to common law principles might lead to even more ambiguities and uncertainty.

Common law jurisdictions such as the UK, Australia and Singapore have codified the general duties of directors. A major feature of the UK's codification is the introduction of a duty to promote the success of the company. It requires a director of a company to act in good faith and to promote not only the commercial interests of its shareholders, but also the well-being of other stakeholders, such as its employees, suppliers and customers and be responsible for the impact of their business operation on the surrounding community and the environment. This is tantamount to being a broad obligation promoting corporate social responsibility.

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