

**COMPANIES (AMENDMENT) BILL 2002**  
**COMMENTS BY THE COMPANY AND FINANCIAL LAW COMMITTEE OF THE LAW SOCIETY OF HONG KONG**

Section	Amendments	Response
<b>Clause 1</b>	States the title of the Bill and provides for its commencement.	No comment
<b>Clause 2(1)(a)</b>	Amends the definition of <i>annual return</i> by repealing an obsolete reference to section 108.	No comment
<b>Clause 2(1)(b)</b>	Adds the following new definitions:	
	<i>Certificate of solvency</i>	No comment
	<i>Image record and imaging method</i>	No comment
	<i>Manager</i>  *This is a recommendation of the Standing Committee in the SCCLR Report.	It is not clear whether ‘under the immediate authority of the board’ includes for example someone who reports directly to the managing director. We recommend that the wording be amended to clarify this.
	<i>Record</i>	No comment
	<i>Shadow director</i>  *This amendment is a recommendation of the Standing Committee in the SCCLR Report.	No comment
<b>Clause 2(2)</b>	Amends section 2(2) by substituting the concept of a shadow director with <i>shadow director</i> as a defined term.	No comment
<b>Clause 2(3)</b>	Adds new sections 2(12) and (13) to clarify that references to directors or members shall also mean director or member, respectively.	No comment

Section	Amendments	Response
<b>Clause 3</b>	Repeals section 2A(3) which provides that deviations from specified forms not affecting the substance of such form shall not invalidate it.	No comment
<b>Clause 4(1)</b>	Amends section 4(1) to permit the formation of a company by one person.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clause 4(2)</b>	Adds new section 4(4) which prohibits the incorporation of a company limited by guarantee with a share capital.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clause 5</b>	Amends section 8 to remove the right of dissenting shareholders in a public company to resort to the court to cancel an alteration to the objects clause of the company's memorandum of association.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clause 6</b>	Amends section 18(2) to require a company to file a statement in specified form with the Registrar, instead of a statutory declaration on incorporation.	Agreed
<b>Clause 7</b>	Amends section 22 to require a company that changes its name, to file a notice in the specified form with the Registrar, instead of a copy of the special resolution, and to require the Registrar to issue a certificate of change of name instead of an altered certificate of incorporation.	Agreed
<b>Clause 8</b>	Amends section 22B(3) to reflect the amendment to section 22 (see Clause 7 above), i.e., a copy of the special resolution on a change of name is no	No comment

Section	Amendments	Response
	longer required to be filed; instead only a notice of change of name is now required.	
<b>Clause 9</b>	<p>Amends section 23(1) to clarify the contractual position of a company and its members in relation to each other and to give every member of a company a personal right to sue to enforce the terms of the memorandum and articles of association.</p> <p><i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i></p>	No comment
<b>Clause 10</b>	Amends section 25A to remove the right of dissenting shareholders in a public company to resort to the court to cancel an alteration to memorandum of association.	Agreed
<b>Clauses 11 and 12</b>	Repeals section 31 which provides for liability where a company carries on business with only one member and the subheading preceding it.	No comment
<b>Clause 13</b>	Amends section 45 to shorten the period for filing a return of allotments from 8 weeks to 1 month and to simplify the filing requirements, in particular, in relation to the allotment of shares otherwise than for cash and where such a contract has not been reduced in writing, and to remove the need to state the shareholder's occupation.	Agreed
<b>Clauses 14 to 17 and 19 to 23</b>	Amend sections 47E, 47F, 47G, 48, 49J, 49K, 49L, 49M and 49Q respectively (relaxation of financial assistance rules) to replace the references in those sections to a statutory declaration by references to a statement in the specified form.	The consequences of making a false statement are not set out. We suggest that this is specifically addressed.
<b>Clause 18</b>	Amends section 49BA(10)(b) by substituting the concept of shadow director with the defined term.	No comment

Section	Amendments	Response
<b>Clause 24</b>	Amends section 54(1) to provide for the use of a specified form when notifying the Registrar on a consolidation of the share capital of conversion of shares into stock.	No comment
<b>Clause 25(1) and (2)</b>	Amends section 55 to require a company to give notice of an increase in share capital within 15 days after the increase takes effect.	There may be circumstances where someone searching the public register would want to know the passing of a resolution to increase capital, even if the increase will or may take place at a later date. We therefore suggest that notification is still required within 15 days of passing the resolution and, where appropriate, again on the resolution lapsing or becoming unconditional.
<b>Clause 25(3)</b>	Amends section 55(2) to remove the requirement for a printed copy of the resolution to be filed with the Registrar.	No comment
<b>Clause 26(1)</b>	Technical correction to section 58(1C) by repealing the unnecessary reference to subsection (1D) in that section.	No comment.
<b>Clause 26(2)</b>	Amends section 58 to provide that court approval is not required where the reduction consists of a re-designation of the par-value to a lower amount, subject to certain specified conditions.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clauses 27 and 28(1)</b>	Amend sections 59 and 61(1) to reflect the amendment to section 58 above (see Clause 26(2) above).	No comment
<b>Clause 28(2)</b>	Amends section 61(4) to provide for the Registrar to issue a certificate with his printed signature.	No comment.
<b>Clause 29</b>	Adds section 61A to the Ordinance which sets out the procedures for a reduction of capital under section 58 where court approval is not required.	No comment

Section	Amendments	Response
<b>Clause 30</b>	Make consequential amendments to section 63A(6) in connection with the new section 114AA which provides for one member to constitute quorum for a meeting of a company with only one member.	No comment
<b>Clause 31</b>	Amends section 70 to change the time-limit for the completion of a transfer of shares by a public company from 2 months to 10 business days.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clause 32</b>	Amends section 83(2) to make clear that a certificate of registration of a charge may bear a printed signature of the Registrar and to remove the requirement that the certificate state the amount secured by the charge.	In relation to the removal of the need for the Registrar to sign each certificate by hand, refer to our comments in respect of Clause 28(2) above. In relation to the removal of the requirement for the certificate to state the amount secured, it can actually be useful (especially to creditors) if the amount charged is stated on the certificate. We query the rationale for this amendment.
<b>Clause 33</b>	Amends section 85 to:  (i) streamline the procedure with respect to entries of satisfaction and release of property from charge; and  (ii) widen the scope of the section to cover releases of the whole of a charge and cases where the whole of the property charged has ceased to form part of the company's property or undertaking.	We agree to the changes. We suggest that the opportunity is taken to clarify the position of a creditor if the company wrongly files a memorandum of satisfaction.
<b>Clause 34</b>	Makes a consequential amendment to section 86(1) in connection with the amendment made to section 85.	No comment
<b>Clause 35</b>	Amend section 87 to include a requirement for receivers, managers and liquidators to provide their identity card or passport numbers and to notify	No comment

Section	Amendments	Response
	the Registrar of any change in the particulars filed with the Registrar.	
<b>Clause 36</b>	Amends section 92(2) to provide for the use of a specified form when notifying the Registrar of the situation of the registered office and any change thereof.	No comment
<b>Clause 37</b>	Deletes the requirement in section 95(1)(a) for a company to enter the details of the occupations or descriptions of members of the company in the company's register of members.	No comment
<b>Clause 38</b>	<p>Adds new section 95A requiring companies in which the number of members of such company:</p> <p>(i) falls to one; or</p> <p>(ii) increases from one to two or more members,</p> <p>to record that fact in the company's register.</p>	We do not see the need for this. What are to be the consequences of failure to do this?
<b>Clause 39</b>	Amends section 103(1) to delete the requirement that a company file a statutory declaration when applying for a licence to keep a branch register of members and to provide for the application to be filed with the Registrar.	No comment
<b>Clause 40</b>	Amends section 109(5) by substituting the concept of shadow director with the new defined term.	No comment
<b>Clause 41</b>	Amends section 114A(1) by adding reference to the new section 114AA.	No comment
<b>Clause 42</b>	Adds new section 114AA which provides that one member constitutes a quorum for a meeting of a company having only one member.	No comment
<b>Clause 43</b>	Amends section 115A(2) to reduce the	Agreed

Section	Amendments	Response
	<p>threshold for shareholders' proposals to 2½% of voting rights or 50 members.</p> <p><i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i></p>	
<b>Clause 44</b>	Adds new section 116BC which provides that, a sole member of a company who makes any decision which is akin to a decision agreed to by a company in a general meeting, shall provide the company with a written record of that decision.	No comment
<b>Clause 45</b>	Amends section 117(4)(a) to exclude from the application of that section special resolutions effecting a change of company name.	No comment
<b>Clauses 46 and 47</b>	Amend sections 128 and 129 respectively (statements in companies accounts of subsidiaries and associated companies) to clarify the reporting requirements, to provide for the use of specified forms, to remove archaic terminology and to widen the scope of the offence provisions to cover a failure to comply with section 128(5A) or 129(5A).	No comment
<b>Clause 48</b>	Makes a consequential amendment to section 129A(1) in connection with the amendments made to sections 128 and 129.	No comment
<b>Clause 49</b>	Amends section 129B(1) to provide for the signing of a company's balance sheet by one director in the case of a sole-director company.	No comment
<b>Clause 50</b>	Corrects a cross-reference in section 140A(3)(b), (4) and (6)(b).	No comment.

Section	Amendments	Response
<b>Clause 51</b>	Makes consequential amendments to section 145B(b) in connection with the amendment made to section 161B.	No comment
<b>Clause 52</b>	Amends section 151 to provide for the use of a specified form when notifying the Registrar upon appointment of an inspector by the Financial Secretary to investigate the affairs of a company.	No comment
<b>Clause 53</b>	Amends section 153 (which requires every company to have at least two directors) to apply only to public companies. It also adds new section 153A, which permits a private company to have only one director and deems certain persons to be a director in cases where a company has not filed a return under section 158.	Agreed
<b>Clause 54</b>	<p>Adds section 153B, which makes clear that an alternate director is the agent of the director who appointed him and provides that a director shall be vicariously liable for torts committed by his alternate</p> <p><i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i></p>	Agreed
<b>Clause 55</b>	Adds section 153C, which provides that a written record of a decision of a sole director of a private company shall be sufficient evidence of that decision.	Agreed
<b>Clause 56</b>	Amends section 154 to prohibit a sole director of a private company and certain bodies corporate from being the secretary of the company.	Agreed



Section	Amendments	Response
<b>Clause 57(1) and (2)</b>	<p>Amends section 157B(1) and (2) to provide that a director may be removed by an ordinary resolution instead of a special resolution, notwithstanding any provision in the company's constitution.</p> <p><i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i></p>	Agreed
<b>Clause 57(3)</b>	<p>Makes a technical change to the terminology used in section 157B(5) from "term of office" to "period of office".</p>	No comment
<b>Clauses 58 and 59</b>	<p>Amends section 157H to extend the prohibition against a company making a loan to a director, or providing a guarantee or security for such a loan, to cover more modern forms of credit. The section is now split into two sections, one covering the prohibition and one covering the relevant exceptions to the prohibition.</p> <p>Amends section 157I so that it is consistent with the amended section 157H and the new section 157HA.</p> <p><i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i></p>	Agreed
<b>Clause 60</b>	<p>Amends section 157J such that the provisions are consistent with the amended section 157H and the new section 157HA.</p>	No comment
<b>Clause 61(1)(a)</b>	<p>Amends section 158(5) to provide for the use of a specified form to notify the Registrar of a director's consent to act on appointment.</p>	No comment
<b>Clauses 61(1)(b) and (2)</b>	<p>Make consequential amendments to sections 158(5) and 158(6)(a) in connection with the amendment made to section 153.</p>	No comment

Section	Amendments	Response
<b>Clause 61(3)</b>	Amends section 158(10)(a) by substituting the concept of shadow director with the new defined term.	No comment
<b>Clause 62</b>	Repeals an obsolete provision in section 158C(1)(a).	No comment.
<b>Clause 63</b>	Amends the reporting requirements under section 161B so that it is consistent with the changes made to section 157H and the new section 157HA.	No comment
<b>Clause 64</b>	Amend sections 161BA(1) and (2) to correct a cross-reference in section 161B.	No comment
<b>Clause 65</b>	Adds new section 162B which requires a company that has only one member, and that member is also the director of such company, to record in a written memorandum the terms of any oral contract that the company enters into with that member.	Agreed
<b>Clause 66</b>	Amends section 165 to clarify the scope of indemnities for directors and to permit companies to purchase liability insurance for officers and auditors in certain specified circumstances.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clause 67</b>	Amends section 168C to reflect the new definition of shadow director	No comment
<b>Clause 68</b>	Makes a technical correction to the Chinese text of section 168H(1) so that it is consistent with the English interpretation.	No comment
<b>Clause 69</b>	Amends section 177 to provide for the winding up of a company that has no members and makes consequential amendments in connection with the amendment made to section 8.	No comment

Section	Amendments	Response
<b>Clause 70</b>	<p>Amends section 178 to permit the increase in the minimum amount of debt below which a petition for winding-up cannot be presented from \$5,000 to \$10,000 or such greater amount as may be prescribed by the Financial Secretary.</p> <p><i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i></p>	Agreed
<b>Clause 71</b>	Makes a consequential amendment to section 179(1) to provide for the possibility of one-member companies.	No comment
<b>Clause 72</b>	Amends section 195(a) to provide for the use of a specified form when notifying the Registrar on appointment of the provisional liquidator.	No comment
<b>Clause 73</b>	Makes a consequential amendment to section 199(6)(a) in connection with the amendment made to section 168C by substituting the concept of shadow director with the new defined term.	No comment
<b>Clause 74</b>	Amends section 226A to allow a liquidator to issue a certificate under that section and to provide for the use of a specified form.	No comment
<b>Clauses 75, 77, 82 and 83</b>	Make consequential amendments to sections 228(1)(d), 230, 264A(2)(b) and 264B(2)(b) respectively in connection with the amendments made to section 228A.	No comment
<b>Clause 76</b>	<p>Amends section 228A:</p> <p>(a) to require the directors of a company to file a winding-up statement in the specified form, instead of a statutory declaration;</p> <p>(b) to require a provisional liquidator to give notice of his appointment or of his ceasing to</p>	The consequences of making a false statement are not set out. We suggest that this is specifically addressed.

Section	Amendments	Response
	<p>act to the Registrar in the specified form;</p> <p>(d) to provide for the case of a private company having only one director; and</p> <p>(d) to make other technical changes.</p>	
<b>Clause 78</b>	Makes a consequential amendment to the subheading before section 233 in connection with the amendments made to that section.	No comment
<b>Clauses 79(1) to (5)</b>	Amends section 233 to replace the requirement for a statutory declaration with a requirement for a certificate of solvency in the specified form.	The consequences of making a false statement are not set out. We suggest that this is specifically addressed.
<b>Clause 79(6)</b>	Adds new section 233(6) to provide for the case of a private company having only one director.	No comment
<b>Clause 79(7)</b>	Adds new section 233(7) to deal with transitional matters.	No comment
<b>Clause 80</b>	Makes a consequential amendment to section 237A(1).	No comment
<b>Clause 81</b>	Amends section 253 to include a requirement for receivers, managers and liquidators to provide their identity card or passport numbers and to notify the Registrar of any change in the particulars filed with the Registrar.	No comment
<b>Clause 84</b>	Amends section 271(3) by substituting the concept of shadow director with the new defined term.	No comment
<b>Clause 85</b>	Makes a consequential amendment to section 300A(1) in connection with the amendments made to section 300B.	No comment
<b>Clause 86</b>	Amends section 300B (statement of affairs submitted to the receiver) to replace the requirement for an affidavit with a requirement for a statement in writing.	The consequences of making a false statement are not set out. We suggest that this is specifically addressed.

Section	Amendments	Response
<b>Clause 87</b>	Repeals section 303A which relates to the taking of affidavits.	No comment
<b>Clause 88</b>	Amends section 305 to take account of documents that are filed or stored with the Registrar in electronic form. The new section 305(1)(b)(ii) is added as a consequence of the amendments made to section 22(7).	No comment
<b>Clause 89</b>	Adds new section 305A which provides that documents required to be signed by the Registrar may instead be authenticated in a manner determined by the Registrar.	No comment
<b>Clause 90</b>	Makes a consequential amendment to section 310(1) in connection with the amendment made to section 4(1).	No comment
<b>Clauses 91 and 92</b>	Amend sections 312(a) and 313(a) respectively to remove the requirement to provide details of members' occupations in relation to registration under Part IX.	No comment
<b>Clause 93</b>	Amends section 314 to correct a spelling error and to replace the requirement for a statutory declaration with a requirement for a statement in writing in respect of the details to be delivered to the Registrar for registration under Part IX.	No comment
<b>Clause 94</b>	Amends section 318 to allow a registration certificate under Part IX to be issued by the Registrar to bear a printed signature instead of his signature under hand.	No comment
<b>Clause 95</b>	Amends section 323 to remove the right of dissenting shareholders of a public company to resort to the court to cancel an alteration to the conditions of the company's memorandum of association.	Agreed
<b>Clause 96</b>	Amends section 327 to permit the increase in the minimum amount of	Agreed

Section	Amendments	Response
	debt below which petition for winding up cannot be presented from \$5,000 to \$10,000 or such greater amount as may be prescribed by the Financial Secretary.	
<b>Clause 97</b>	Amends section 333(3) to allow a registration certificate under Part XI to be issued by the Registrar to bear a printed signature instead of his signature under hand.	No comment
<b>Clause 98</b>	Amends section 333B(1) (termination of authorized representative) to replace the requirement for a statutory declaration by a requirement for a statement in writing in respect of the details to be delivered to the Registrar for registration under Part XI.	No comment
<b>Clause 99</b>	Repeals an obsolete provision in section 333C(1)(a).	No comment
<b>Clause 100</b>	Amends section 341 by substituting the concept of shadow director with the new defined term.	No comment
<b>Clause 101</b>	Amends section 344A (dormant companies) to remove the requirement for a statutory declaration and to simplify the procedure for a company to become dormant.	No comment
<b>Clauses 102, 103 and 105</b>	Amend sections 346, 347 and 348B(b) respectively to facilitate the delivery, processing and storage of information in electronic form.	No comment
<b>Clause 104</b>	Amends section 348 to take account of documents that are in electronic form and to allow the Registrar to refuse to register or accept for registration forms that deviate from the forms specified by the Registrar under section 2A.	No comment
<b>Clause 106</b>	Amends section 348D to take account of documents and records that are in electronic form.	No comment

Section	Amendments	Response
<b>Clause 107</b>	Amends section 351(2) by replacing the concept of shadow director with the new defined term.	No comment
<b>Clause 108(a), (b) and (e)</b>	Amends certain cross-references in the First Schedule.	No comment
<b>Clause 108(c)</b>	Amends regulation 1 of Part I of Table A in the First Schedule to take account of electronic communications and to remove obsolete provisions.	Agreed
<b>Clause 108(d)</b>	Amends regulation 82 of Part I of Table A to remove the directorial autonomy rule.  <i>*This amendment is a recommendation of the Standing Committee in the SCCLR Report.</i>	Agreed
<b>Clause 109</b>	Amends certain cross-references in the Eighth Schedule and makes consequential amendments to that Schedule in connection with the amendments made to sections 22 and 85.	No comment
<b>Clause 110</b>	Amends certain cross-references in the Tenth Schedule.	No comment
<b>Clause 111</b>	Amends certain cross-references in the Eleventh Schedule.	No comment
<b>Clause 112</b>	Makes consequential amendments to the Twelfth Schedule.	No comment
<b>Clause 113</b>	Makes a consequential amendment to rule 5(1)(a) and (b) of Order 102 of the Rules of the High Court (Cap. 4 sub. leg.) and repeals rules 2(3) and 6(3), which are obsolete.	No comment
<b>Clause 114</b>	Repeals the Companies (Requirements for Documents) Regulation (Cap. 32 sub. leg.), which is obsolete.	No comment
<b>Clause 115</b>	Repeals the Companies Ordinance (Fee for Taking Affidavit, Affirmation or Declaration) Notice (Cap. 32 sub. leg.) as a consequence of the repeal of	No comment

Section	Amendments	Response
	section 303A (Clause 87).	
<b>Clauses 116 to 124</b>	Make consequential amendments to other enactments.	No comment

**Company and Financial Law Committee**  
**The Law Society of Hong Kong**  
**26 June 2002**

60040