

Consultation Paper on CO Rewrite re Company Name, Directors' Duties, Corporate Directorship and Registration of Charges

In relation to the captioned paper, The Hong Kong Institute of Directors (“HKIoD”) has gone through the processes of consulting our members and of conducting focused review by our Corporate Governance Committee under the leadership of Dr Kelvin Wong. Hence, the response forwarded as follows represents our consolidated collective views:-

1. Company Name

HKIoD agrees that:-

- We need to amend the law to empower the Registrar, upon receipt of a court order requiring a company to change its name, to direct the company to change its name within a specified period;
- The Registrar should be further empowered to change a company’s name to its registration number if the company does not comply with his/her direction to change its name within the specified period; and
- The law should be amended to provide the Registrar with a discretionary power to approve a “hybrid name” where the applicant can show to the satisfaction of the Registrar that there is a genuine business need. Association in a joint venture should constitute a genuine business need.

2. Directors' Duties

HKIoD believes that directors’ duties should not be codified at this time. Codification of directors’ duties is very controversial. It is a process combining art and science, unlike engineering. For example, the test of “reasonable care” of directors has been interpreted by case law, which has captured both principles and evolving practices. Therefore, we need to have more debate on the subject.

One significant issue that we need to take into consideration is the impact on the supply of quality independent non-executive directors as a result of codification. The experienced professionals may be driven away, having weighed the increased risk against the minimal directors’ fees they receive. As an international financial centre, Hong Kong needs professionals to run the companies. If we were not able to find sufficient capable individuals to serve as independent non-executive directors, the quality of Hong Kong as an international market would be affected. This is a common view shared amongst listed companies.

The consultation paper should also take into account the qualification of directors. For instance, it may need to specify what the requirements of directors and what training requirements are.

Another issue is the principle of enlightened shareholder value, which is in contrast to the traditional *bona fide* principle. In the case the enlightened shareholder value contradicts

with the existing *bona fide* principle, it should be clearly specified which one prevails.

While the UK approach suggests that directors must promote the success of the company for the benefit of shareholders, it has not addressed the profile of employees. Different stakeholders may have different expectations towards risk-reward trade-off of a company. For instance, for those employees who focus on retirement benefits, short to medium term profitability may not be their priority. They would, instead, look for long-term profitability.

Last but not least, the proposed codification of directors has an implication on directors' liabilities and insurance coverage, which need to be discussed in order to evaluate the pros and cons of such a codification on a cost-benefit basis.

To clarify and make directors' duties more accessible, HKIoD suggests that principles and rationales derived from case law can be documented in a user-friendly manner for public access from website.

3. Corporate Directorship

HKIoD fully supports that corporate directorship should be abolished altogether in Hong Kong, subject to a reasonable grace period.