

討論文件

《財務匯報局條例草案》委員會

逐項條文審議

草案第 51 條 – 「保密」的修訂字眼

政府當局已按法案委員會在二零零六年四月二十八日的會議上就草案第 51 條進行的討論（參閱立法會 CB(1)1364/05-06(02) 號文件附件 A），進一步修訂上述條文第 (3)(b)(ix) 和 (3)(c) 款，以區別破產管理署署長可據此而從財務匯務局收取資料的不同身分，以便破產管理署署長在該身分所限內履行其職能。經進一步修訂的字眼載於本文件附件。

財經事務及庫務局
二零零六年五月

《 財務匯報局條例草案 》

委員會審議階段修正案¹

51. Preservation of secrecy

(1) Except in the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, a specified person -

- (a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates.

(2) Despite subsection (1), a specified person may -

- (a) disclose information that has already been made available to the public;
- (b) disclose information for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;
- (c) disclose information for the purpose of

¹ 擬議修正案的字眼或須待法律草擬專員再作敲定。

seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;

- (d) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
- (e) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.

(3) Despite subsection (1), the Council may -

- (a) subject to subsection (4), disclose information to a specified authority for the purpose of referring a case or complaint, or providing assistance, to the authority under section 12;
- (b) subject to subsection (4), disclose information to -
 - (i) the Chief Executive;
 - (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) the Secretary for Financial Services and the Treasury;

- (v) the Commissioner of Police of Hong Kong;
- (vi) the Commissioner of the Independent Commission Against Corruption;
- (vii) the Commissioner of Inland Revenue;
- (viii) the Registrar of Companies;
- (ix) the Official Receiver in a capacity other than that of a liquidator or provisional liquidator appointed under, or holding such office by virtue of, the Companies Ordinance (Cap. 32);
- (x) the Monetary Authority;
- (xi) the Securities and Futures Commission;
- (xii) the Market Misconduct Tribunal;
- (xiii) the Insurance Authority;
- (xiv) the Mandatory Provident Fund Schemes Authority;
- (xv) the HKICPA;
- (xvi) an inspector appointed by the Financial Secretary under section 142 or 143 of the Companies Ordinance (Cap. 32) to investigate the affairs of a corporation;
- (xvii) a public officer authorized by the Secretary under subsection (12); or
- (xviii) a company recognized as an exchange

company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);

(c) subject to subsection (4), if there is or has been an investigation under Part 3 concerning a relevant irregularity, or an enquiry under Part 4 concerning a relevant non-compliance, in relation to a listed corporation, disclose information on the listed corporation to -

(i) the Official Receiver in the capacity of a liquidator or provisional liquidator of the listed corporation appointed under, or holding such office by virtue of, the Companies Ordinance (Cap. 32); or

(ii) any other person who -

(A±) is a liquidator or provisional liquidator of the listed corporation appointed under the Companies Ordinance (Cap. 32); or

(B±±) acts in a similar capacity in relation to the listed corporation under any law of a place outside Hong Kong;

~~(c) disclose information to a person who -~~

~~(i) is a liquidator or provisional liquidator appointed under the Companies Ordinance (Cap. 32); or~~
~~(ii) acts in a similar capacity under any law of a place outside Hong Kong,~~
~~for the purpose of enabling or assisting the person to perform his functions as such liquidator or provisional liquidator or in such similar capacity;~~

- (d) disclose information with the consent of -
- (i) the person from whom the information was obtained or received; and
 - (ii) if the information does not relate to such person, the person to whom it relates;
- (e) disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it; and
- (f) disclose information for the purpose of, or in connection with, an audit under section 19.

(4) The Council shall not disclose information under subsection (3)(a) ~~or (b)~~, (b) or (c) unless the Council is of the opinion that -

- (a) the disclosure will enable or assist the

recipient of the information to perform his functions; and

- (b) it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(5) Subject to subsection (6), if information is disclosed pursuant to subsection (1), (2) or (3) (other than subsection (2)(a) or (3)(e)) -

- (a) the person to whom the information is so disclosed; or
- (b) any other person obtaining or receiving the information from that person,

shall not disclose the information to any other person.

(6) Subsection (5) does not prohibit the person referred to in subsection (5)(a) or (b) from disclosing the information to any other person if -

- (a) the Council consents to the disclosure;
- (b) the information has already been made available to the public;
- (c) the disclosure is for the purpose of seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;

(d) the disclosure is in connection with any judicial or other proceedings to which the person so referred to is a party; or

(e) the disclosure is in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.

(7) The Council may attach such conditions as it considers appropriate to -

(a) a disclosure of information made by it pursuant to subsection (3); or

(b) a consent granted by it pursuant to subsection (6)(a).

(8) Subsection (1) does not affect the operation of section 13(3) of The Ombudsman Ordinance (Cap. 397) or section 44(8) of the Personal Data (Privacy) Ordinance (Cap. 486).

(9) Any specified person who contravenes subsection (1) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) A person commits an offence if -

(a) he discloses any information in contravention

of subsection (5); and

(b) at the time of the disclosure -

(i) he knew, or ought to have known, that the information was previously disclosed to him or any other person pursuant to subsection (1), (2) or (3) (other than subsection subsections (2)(a) or (3)(e)); and

(ii) he had no reasonable grounds to believe that subsection (5) does not apply to him by virtue of subsection (6).

(11) A person who commits an offence under subsection (10) is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(b)(xvii).

(13) In this section, "specified person" (指明人士) means

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(a) the Council; or

(b) any person who -

(i) is or has been -

(A) a member of the Council, the Investigation Board, a Review Committee or a committee established by the Council;

(B) a related person of the Council;
or

(C) a person employed by or assisting a related person of the Council;
and

(ii) performs or has performed any function under this Ordinance.