

**Bills Committee on Companies (Amendment) Bill 2004  
Seventh meeting on 7 April 2005**

**List of follow-up actions to be taken by the Administration**

1. Impact of the Bill on the asset-securitization market in Hong Kong

Given the grave concern expressed by the industry about the possible negative impact of the Bill on the development of the asset-securitization market in Hong Kong, the Administration is requested to re-assess the impact of the Bill in this regard. In this connection, the Administration is requested to take the following actions:

- (a) To provide the following information with relevant statistics:
  - (i) Existing size of the asset-securitization market in Hong Kong and its expected growth;
  - (ii) Existing role and contribution of the asset-securitization industry in promoting Hong Kong's economy and maintaining Hong Kong's status and competitiveness as an international financial centre; and
  - (iii) Impact of the Bill on items (i) and (ii) above.
- (b) To respond to the following views about the impact of the Bill on the development of the asset-securitization market in Hong Kong:
  - (i) Hong Kong Mortgage Corporation Limited (HKMCL)'s submission dated 11 March 2005 (LC Paper No. CB(1)1113/04-05(01)) (paragraph 14)  
“...This would greatly reduce the incentives for securitization transactions, not only on the part of the transferor but also on the part of the third party service providers, since consolidation of the SPE might affect their financial ratios. Finally, the inability to offer any of the options would reduce the attractiveness of asset-backed securities to investors and require a higher yield to compensate, thereby increasing the cost of issuance to the transferor and further reducing the incentive for securitization.”
  - (ii) Professor Kalok CHAN's submission dated 16 March 2005 (LC Paper No. CB(1)1130/04-05(01)) (second last paragraph)  
“[I]n order for securitization SPEs not to fall within the proposed definition of “subsidiary”, the originator could choose not to provide any form of credit enhancement. However, this should make the securities issued by the SPEs less attractive and increase the required yield. I do not have

data on how much this will increase the cost of issuing securitization notes. But obviously, this will reduce the incentives for securitization.”

(iii) The Hong Kong Capital Markets Association’s submission dated 31 December 2004 (LC Paper No. CB(1)647/04-05(01)) (paragraph 4)

“...on a comparative basis the market is still extremely small and utilized by only a limited number of issuers. Continued growth and expansion in the number of issuers will only be supported by the ability to achieve off balance sheet treatment for securitized assets, which the proposed amendments will unfortunately curtail.”

- (c) To provide the justifications for the Administration’s view that off-balance sheet treatment for securitization special purpose entities (SPEs) may result in “distortion of financial statements of the group as a whole to the extent that they do not show a true and fair view” (Paragraph 7 of LC Paper No. CB(1)938/04-05(09)), and to clarify whether the current off-balance sheet treatment for securitization SPEs has failed to give a “true and fair” of the company’s group accounts.
- (d) To provide information on the size of the asset-securitization markets in overseas jurisdictions, and the development and growth of such markets after the adoption of the International Accounting Standard 27, if applicable.
- (e) To provide detailed response in respect of the overseas experience mentioned in various submissions received by the Bills Committee, in particular the following two submissions:
  - (i) HKMCL’s submission dated 10 January 2005 (LC Paper No. CB(1)692/04-05(01)); and
  - (ii) HKMCL’s submission dated 11 March 2005 (The True Sale Initiative in Germany mentioned in paragraph 3 of and Annex 2 to LC Paper No. CB(1)1113/04-05(01)).
- (f) To provide information on the practices of local and overseas regulators in treating securitization SPEs.

2. Proposed “true and fair view override” provisions

The Administration undertakes to take the following actions:

- (a) To provide draft Committee Stage amendment (CSA) to remove the words “In the following provision of this section or” from the existing section 123(3) to the Companies Ordinance (CO) (paragraph 21 of LC Paper No. CB(1)1207/04-05(04)); and
  - (b) To provide draft CSA to the proposed section 123(4) of CO to expressly provide that the new subsection (4) should not affect the generality of the existing subsection (1) (paragraph 17 of LC Paper No. CB(1)1207/04-05(04)).
  
- 3. Section 3(3) of the proposed 23<sup>rd</sup> Schedule of CO  
On the Administration’s proposal to remove section 3(3) from the proposed 23<sup>rd</sup> Schedule to CO, the Administration accepts the suggestion of the Legal Adviser to the Bills Committee that it would review the need of introducing any consequential amendments, such as amendment(s) to section 7(b) of the proposed 23<sup>rd</sup> Schedule.
  
- 4. Clause-by-clause examination of the Bill  
To facilitate the clause-by-clause examination of the Bill, the Administration is requested to provide draft proposed CSAs for the Bills Committee’s consideration.
  
- 5. Work plan  
The Administration is requested to report to the Bills Committee at the next meeting on 26 April 2005 on its plan for resumption of the Second Reading debate on the Bill (including the target date for resumption) and its assessment of the number of meetings required for completing scrutiny of the Bill.

Council Business Division 1  
Legislative Council Secretariat  
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