

Bills Committee on Companies (Amendment) Bill 2004
Ninth meeting on 13 May 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
The Administration undertakes to endeavour to present the following information to the Bills Committee at the next meeting on 23 May 2005:
 - (a) Outcome of the Administration's re-assessment of the impact of the Bill on the asset-securitization market in Hong Kong; and
 - (b) The information and written responses requested by members at the meeting on 7 April 2005 (i.e. item 1 of LC Paper No. CB(1)1353/04-05(01)).

2. Clause 3 - proposed amendments to section 123 of the Companies Ordinance (CO)
To address members' concern about the effect and drafting of subsections (1), (2), (3), (4) and (4A) of section 123 of CO, the Administration agrees to take the following actions:
 - (a) To review and simplify the drafting of the existing subsections (1), (2), (3) and the proposed new subsections (4) and (4A) to set out clearly the Administration's policy intent, as follows -
 - (i) A company's balance sheet and profit and loss account shall comply with the "true and fair view" requirement (subsection (1)) and the requirements of the Tenth Schedule of CO (subsection (2)), and the former requirement is overriding;
 - (ii) Where compliance with the requirements of the Tenth Schedule and other requirements of CO would not be sufficient to give a true and fair view of the state of affairs or the profit and loss of the company, then:
 - additional information as may be necessary to give a true and fair view thereof shall be given in the company's accounts or statement (proposed subsection (4)); or
 - the directors shall depart from the requirements to the extent as may be necessary to give a true and fair view, and give the reasons for and particulars and effects of such departure in the company's accounts or statement (proposed subsection (4A)).

- (b) In connection with item 2(a) above, to consider the following drafting suggestions -
 - (i) To incorporate the gist of the proposed subsections (4) and (4A) in the existing subsections (2) and (3); and
 - (ii) To consolidate subsections (4) and (4A) and replace “Without affecting the generality of subsections (1), (2) and (3)” at the beginning of the proposed subsection (4) by “Without prejudice to subsections (1), (2) and (3)”.

- 3. Clause 5 – proposed amendments to section 126 of CO
The Administration agrees to review the proposed amendments to section 126 of CO in connection with the review of clause 3 mentioned under item 2 above.

- 4. Clause 10 – proposed section 140(2)(d) of CO
Given that a company may have more than one subsidiary and that a subsidiary undertaking may have more than one company as its parent undertaking, the Administration undertakes to propose Committee Stage amendments to replace the word “the” at the beginning of subsection (2)(d)(i) and (ii) by “a”.

- 5. Clause 19 – transitional provisions
In response to comments made by the Legal Adviser to the Bills Committee, the Administration is requested to take the following actions:
 - (a) To confirm whether other statutes have adopted similar wordings used in the English text of clause 19(2); and
 - (b) To re-consider the drafting of the Chinese text of clause 19(2) to achieve consistency with any previous standard formulation.