

**Bills Committee on  
Companies (Amendment) Bill 2004**

**Follow-up Actions Arising from  
the Discussion at the Meeting on 13 May 2005**

**Purpose**

At the Bills Committee meeting held on 13 May 2005, Members requested the Administration to refine the drafting of a few provisions. Having consulted the Department of Justice, we set out our latest Committee Stage Amendments (CSAs) to clauses 3, 5, 10 and 19 and the reasons therefor at the extract of the mark-up version of the Bill at **Annex**. The wording is not final and is subject to further consideration by the Law Draftsman.

**Financial Services and the Treasury Bureau  
May 2005**

3. General provisions as to contents and form of accounts

Section 123 is amended -

(a) in subsection (3)<sup>1</sup>, by repealing "in the following provisions of this section or"<sup>2</sup>;

(b) by repealing subsection (4) and substituting<sup>3</sup> -

~~Section 123(4) is repealed and the following substituted -~~

~~"(4) Without affecting the generality of subsections (2) and (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to those accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company, additional information as may be necessary to give a true and fair view thereof shall be given in the accounts or statement, as the case may require.~~

<sup>1</sup> As we have explained at the last meeting on 13 May 2005, subsection 123(3) is an old provision. However, as subsection (3) refers to Part III of the Tenth Schedule (concerning the accounting requirements for banking and insurance companies) and any other requirements of the CO, its repeal will have implications beyond the purpose of the Bill, which is mainly to amend the definition of "subsidiary" for the purpose of group accounts. For this reason, the Administration proposes to retain the subsection. Separately, we will invite the Standing Committee on Company Law Reform and the Joint Government / HKICPA Working Group (which is tasked to reviewing the accounting and auditing provisions of the Companies Ordinance) to review the subsection.

<sup>2</sup> As we have explained in paragraphs 21 of our paper entitled "Following-up Actions Arising from the Discussion at the Meeting on 15 March 2005" (LC Paper No. CB(1) 1207/04-05(04)) which was discussed at the meeting on 7 April 2005, we are unable to locate any provision that can be regarded as an exception to subsection (3) in the existing subsections (4) to (7) and the proposed subsection (4) in this Annex. Accordingly, we propose to remove "in the following provisions or" in subsection (3).

<sup>3</sup> In response to drafting suggestions of Members and the Senior Assistant Legal Adviser at the meeting on 13 May 2005, we have simplified the wording of the proposed subsections (4) and (4A) in the Blue Bill by combining them into one single subsection. The revised provision currently proposed has been drawn up in consultation with the Senior Assistant Legal Adviser who is content with the drafting.

~~(4A) Where compliance with any of the provisions referred to in subsections (2), (3) and (4) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of a company, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in the company's balance sheet and profit and loss account or in a statement annexed to those accounts."~~

"(4) Where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to those accounts -

- (a) would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company; or
- (b) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of the company,

then -

(c) in the case of paragraph (a),  
additional information that is  
necessary to give a true and  
fair view thereof shall be  
given in the accounts or  
statement, as the case may  
require; and

(d) in the case of paragraph (b),  
the directors of the company  
shall depart from those  
requirements to the extent that  
is necessary to give a true and  
fair view thereof with the  
reasons for and particulars and  
effects of such departure to be  
given in the accounts or in a  
statement annexed to those  
accounts."

**5. Contents of group accounts**

Section 126 is amended -

- (a) in subsection (3), by repealing everything after "information" and substituting a full stop;
- (b) by adding -

~~"(4) Without affecting the generality of subsection (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's group accounts or in a statement annexed to the group accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the holding company and its subsidiaries, additional information as may be necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require.~~

~~(5) Where compliance with any of the provisions referred to in subsections (3) and (4) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of a holding company and its subsidiaries, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in a statement annexed to the company's group accounts."~~

"(4)<sup>4</sup> Where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's group accounts or in a statement annexed to the group accounts -

(a) would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company and its subsidiaries; or

(b) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of the company and its subsidiaries,

then -

(c) in the case of paragraph (a), additional information that is necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require; and

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<sup>4</sup> The proposed section 126(4) has been similarly revised in the light of the currently proposed section 123(4).

(d) in the case of paragraph (b),  
the directors of the company  
shall depart from those  
requirements to the extent that  
is necessary to give a true and  
fair view thereof with the  
reasons for and particulars and  
effects of such departure to be  
given in a statement annexed to  
the company's group accounts."

**10. Disqualifications for appointment  
as auditor**

Section 140(2)(d) is repealed and the following substituted -

"(d) a person who is, by virtue of paragraph (a) or (b),  
disqualified for appointment as auditor of any other  
undertaking which is -

- (i) ~~the~~ subsidiary of the company;
- (ii) ~~the~~<sup>5</sup> parent undertaking of the company; or
- (iii) a subsidiary of the company's parent  
undertaking,

or would be so disqualified if the undertaking were a  
company, " .

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<sup>5</sup> In response to the Senior Assistant Legal Adviser's comment at the meeting on 13 May 2005, we propose a technical amendment to improve the clarity.

## 19. Transitional provisions

(1) The amendments made by this Ordinance shall not apply to a company (including a company which is an insurer within the meaning of section 2(1) of the Insurance Companies Ordinance (Cap. 41)) until the start of the company's first financial year beginning after the expiration of the 30 days immediately following the commencement of this section.

(2) For the avoidance of doubt, it is hereby declared that any provision of the principal Ordinance amended by this Ordinance shall, as it is in force from time to time apart from that amendment<sup>6</sup>, apply to and in relation to a company until subsection (1) applies to the company.

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<sup>6</sup> In response to Senior Assistant Legal Adviser's comment at the meeting on 13 May 2005, the Law Draftsman advises that it is not uncommon to use the expression "apart from the amendment" or similar expressions to bring out the position before the amendment, e.g. section 36(1)(a)(ii) of the Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202). A minor technical amendment is, however, made to the Chinese draft to improve the drafting.