

For Discussion

**Bills Committee on
Financial Reporting Council Bill**

**Component Five
Consequential and Related Amendments**

PURPOSE

In relation to Component Five¹ of the Financial Reporting Council Bill (the Bill), this paper aims to –

- (a) outline the major proposals contained in **Part 6** of the Bill which covers the consequential and related amendments. Broadly, these amendments concern: (i) **revision of defective accounts or reports**; (ii) **secrecy provisions of related ordinances**; (iii) **recovery of investigation costs**; and (iv) **other relevant provisions of related ordinances**; and
- (b) set out the responses of the Administration to the salient comments on these issues as discussed at the second Bills Committee’s meeting held on 27 September 2005 or as reflected in deputations’ comments².

REVISION OF DEFECTIVE ACCOUNTS AND REPORTS

- 2. As **clause 49** provides that the FRC may request directors of a

¹ For the grouping of components, please refer to the Administration’s paper entitled “Proposed work plan” (LC Paper No. CB(1)2288/04-05(35)) as discussed by the Bills Committee at its meeting held on 27 September 2005.

² For details of the responses, please refer to the Administration’s note entitled “Summary of submissions and Administration’s responses” (LC Paper No. CB(1)166/05-06(03)).

listed corporation to voluntarily amend accounts, consequential amendments need to be made to the Companies Ordinance (CO, Cap. 32) for the purposes of the revised accounts, summary financial reports and directors' reports. **Clauses 61 to 64** cover such consequential amendments. **Clause 61** proposes to add section 141E to Part IV of the CO which applies to companies incorporated in Hong Kong. The proposed sections 141E(1) and (2) of the CO, which are modelled on sections 245(1) and (2) of the United Kingdom (UK) Companies Act 1985³, empower the directors of a company to revise accounts and make necessary consequential revisions to the summary financial report or directors' report. In response to the recommendation by the Standing Committee on Company Law Reform in its Part I of the Corporate Governance Review in 2001, the proposed section 141E(3) is added to require the company to, as soon as practicable after making the decision to revise accounts, deliver to the Registrar of Companies for registration a warning statement that the accounts will be so revised. This registration procedure helps prevent further reliance on the defective accounts by the public at the earliest possible opportunity.

3. **Clause 62** proposes to insert section 336A to Part XI of the CO which applies to non-Hong Kong companies. Like **clause 61**, the proposed section 336A of the CO empowers a non-Hong Kong company to revise defective accounts and requires the company to file a warning statement with the Registrar of Companies for registration.

4. **Clause 63** proposes to insert section 359A to the CO to empower the Chief Executive in Council to make Regulations providing for the application of the relevant provisions of the CO in relation to the revised accounts, summary financial report and directors' report under the proposed sections 141E and 336A. Specifically, the Regulations may contain provisions providing for the audit of the revised accounts, the laying of such revised accounts or reports in a company's general meeting, and the notification to shareholders and other relevant parties. The proposed section 359A is modelled on similar enabling provisions under sections 245(3) and (4) of the UK Companies Act 1985⁴.

³ See Annex A.

⁴ See Annex A.

5. **Clause 64** seeks to specify the penalty of offences referred to in the proposed section 141E(4) of the CO (c.f. **clause 61**), which relates to the failure to file a warning statement during the process of revising accounts⁵.

SECRECY PROVISIONS OF RELATED ORDINANCES

6. **Clauses 65, 70 (and 73), 74, 78 and 81** seek to amend the secrecy provisions in Insurance Companies Ordinance (Cap. 41), Professional Accountants Ordinance (PAO, Cap. 50), Banking Ordinance (Cap. 155), Mandatory Provident Fund Schemes Ordinance (Cap. 485) and Securities and Futures Ordinance (SFO, Cap. 571) respectively. The proposed amendments are aimed to enable the relevant organizations (i.e. the Insurance Authority, Hong Kong Institute of Certified Public Accountants (HKICPA), the Monetary Authority, Mandatory Provident Fund Schemes Authority, and Securities and Futures Commission) to disclose information to the FRC notwithstanding the secrecy requirements in the respective ordinances.

RECOVERY OF INVESTIGATION COSTS

7. **Clauses 71, 72 and 80** seek to amend the relevant provisions under the PAO and SFO to empower a Disciplinary Committee of the HKICPA or the Market Misconduct Tribunal to order the certified public accountant or relevant parties, who are found to have committed an irregularity or engaged in any market misconduct, to pay to the FRC the sum the Committee or Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC.

⁵ In relation to the proposed section 336A of the CO (c.f. **clause 62**), the general penalties provision in the existing section 340 of the CO will apply. Section 340 of the CO provides that, if any non-Hong Kong company fails to comply with any of the provisions of Part XI of the Ordinance, the company and every officer or agent of the company who authorizes or permits the default shall be liable.

OTHER CONSEQUENTIAL AMENDMENTS

8. **Clauses 67 to 69** propose to amend the PAO to enable the HKICPA to make contributions to the FRC. In this regard, the HKICPA has indicated that its contribution to the FRC's funding would come from a special levy on the auditors of listed entities. The HKICPA has been consulted on the formulation of the proposed amendments.

9. Moreover, we propose to amend Schedule 1 to the Companies Registry Trading Fund (Cap. 430, sub. leg. B), which sets out the services to be provided by the Companies Registry Trading Fund. **Clause 77** provides that the Companies Registry Trading Fund may support the operations of the FRC by providing the service of the Registrar of Companies as an ex officio member of the FRC and sponsoring the performance by the Council of any of its functions.

10. **Clause 75** seeks to add the reference to "Financial Reporting Council" to Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201). This deems the FRC a "*public body*" for the purposes of Prevention of Bribery Ordinance. Consequently, any employees or members of the FRC would be regarded as "*public servants*" who need to comply with the provisions of the Prevention of Bribery Ordinance concerning public servants.

11. **Clause 76** proposes to add the reference to "Financial Reporting Council" to Schedule 1 to The Ombudsman Ordinance (Cap. 397) to the effect that complaints concerning any maladministration of the FRC may be lodged with The Ombudsman.

12. **Clause 79** seeks to extend the definition of "*financial regulator*" in section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486) by including the "Financial Reporting Council". In essence, pursuant to sections 58(1) and (3) of the Personal Data (Privacy) Ordinance⁶, personal data held for the purposes of the discharge of functions by a "*financial regulator*" are exempt from the requirements under the relevant provisions of the Ordinance. Such functions include those for protecting members of the public against financial loss arising

⁶ See Annex B.

from dishonesty, incompetence, malpractice or seriously improper conduct by persons concerned in the provision of financial services.

**Financial Services and the Treasury Bureau
January 2006**

UK Companies Act 1985

Current through 19 October 2005

245 Voluntary revision of annual accounts or directors' report

(1) If it appears to the directors of a company that any annual accounts or summary financial statement of the company, or any directors' report, operating and financial review or directors' remuneration report, did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised statement, report or review.

(2) Where copies of the previous accounts, report or review have been laid before the company in general meeting or delivered to the registrar, the revisions shall be confined to--

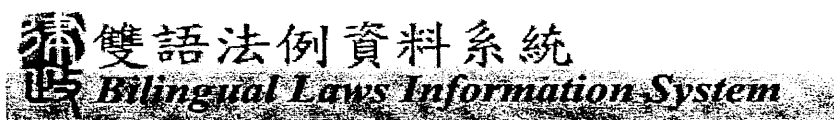
- (a) the correction of those respects in which the previous accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and
- (b) the making of any necessary consequential alterations.

(3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to revised annual accounts or a revised summary financial statement or a revised directors' report, a revised operating and financial review or a revised directors' remuneration report.

(4) The regulations may, in particular--

- (a) make different provision according to whether the previous accounts, statement, report or review are replaced or are supplemented by a document indicating the corrections to be made;
- (b) make provision with respect to the functions of the company's auditors or reporting accountant in relation to the revised accounts, statement, report or review;
- (c) require the directors to take such steps as may be specified in the regulations where the previous accounts, report or review have been--
 - (i) sent out to members and others under section 238(1),
 - (ii) laid before the company in general meeting, or
 - (iii) delivered to the registrar,or where a summary financial statement containing information derived from the previous accounts, report or review has been sent to members under section 251;
- (d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.

(5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.



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Chapter:	486	Title:	PERSONAL DATA (PRIVACY) ORDINANCE	Gazette Number: L.N. 70 of 1999
Section:	58	Heading:	Crime, etc.	Version Date: 03/08/1999

(1) Personal data held for the purposes of-

- (a) the prevention or detection of crime;
- (b) the apprehension, prosecution or detention of offenders;
- (c) the assessment or collection of any tax or duty;
- (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (e) the prevention or preclusion of significant financial loss arising from-
 - (i) any imprudent business practices or activities of persons; or
 - (ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on any thing-
 - (i) to which the discharge of statutory functions by the data user relates; or
 - (ii) which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3); or
- (g) discharging functions to which this paragraph applies by virtue of subsection (3),

are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to-

- (i) prejudice any of the matters referred to in this subsection; or
- (ii) directly or indirectly identify the person who is the source of the data.

(3) Paragraphs (f)(ii) and (g) of subsection (1) apply to any functions of a financial regulator-

(a) for protecting members of the public against financial loss arising from-

(i) dishonesty, incompetence, malpractice or seriously improper conduct by persons-

(A) concerned in the provision of banking, insurance, investment or other financial services;

(B) concerned in the management of companies;

(BA) concerned in the administration of provident fund schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 4 of 1998 s. 14)

(C) concerned in the management of occupational retirement schemes within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426); or

(D) who are shareholders in companies; or

(ii) the conduct of discharged or undischarged bankrupts;

(b) for maintaining or promoting the general stability or effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)

(A); or

(c) specified for the purposes of this subsection in a notice under subsection (4).