

For discussion

**Bills Committee on
Financial Reporting Council Bill**

**Follow-up actions arising
from the meeting held on 12 January 2006**

PURPOSE

This paper sets out the Administration's responses to the follow-up actions arising from the meeting held on 12 January 2006.

USE OF INCRIMINATING EVIDENCE IN PROCEEDINGS

2. With respect to **clause 30(2)** of the Financial Reporting Council Bill (the Bill), a Member has invited the Administration to clarify why a self-incriminating statement given by a person during the investigation of the Audit Investigation Board (AIB) will be admissible in evidence against the person in criminal proceedings in which the person is charged with an offence under Part V of the Crimes Ordinance (Cap. 200)¹ or for perjury in respect of the statement.

3. As the Administration explained at the meeting held on 12 January 2006, in those proceedings in which the person is charged with perjury or giving false information, such a statement may be used as evidence to prove that the statement has been made by the person. According to the Department of Justice, as the purpose of the admission of such a statement is not to establish the truth of its contents but as evidence of the fact that the statement has been made, the statement itself will not incriminate the person concerned. Other evidence will have to

¹ Part V of the Crimes Ordinance provides for the offences of perjury and giving false information.

be adduced to prove that the statement in question is false². **Clause 30(2)** reflects the above intent and is modelled on 187(2) of the Securities and Futures Ordinance (SFO, Cap. 571)³.

ORGANIZATIONAL STRUCTURE OF A FINANCIAL REPORTING REVIEW COMMITTEE

4. Noting that a change in the membership of a Financial Reporting Review Committee (FRRC) during an enquiry will neither of itself constitute a breach of the principles of natural justice nor affect the Committee's legal status and the legality of evidence collected by it⁴, a Member has invited the Administration to review whether the drafting of the relevant provisions in the Bill may give rise to any doubts concerning this position. We are reviewing the relevant provisions with the Department of Justice and will revert during the clause-by-clause scrutiny of the Bill.

5. **Clause 40(1)(b)** provides that the Financial Reporting Council (FRC) may appoint a FRRC, in accordance with **clause 41(1)**, to enquire into the non-compliance of a financial report. **Clause 41(1)** states that a FRRC is to consist of at least five members of the Financial Reporting Review Panel (FRRP). In this regard, some Members of and the Legal Adviser to the Bills Committee have invited the Administration to elaborate on the following matters -

² On the construction of **clause 30(2)**, although a self-incriminating statement made by a person during the investigation by the AIB ("statement A") may be admissible in evidence against the person in criminal proceedings in which he is charged with an offence under Part V of the Crimes Ordinance or for perjury **in respect of the statement** (i.e. "statement A"), statement A is inadmissible in evidence against the person in other criminal proceedings (including those relating to an offence of perjury in respect of another statement ("statement B")). As illustrated at the meeting held on 12 January 2006, if a person is charged with an offence under, say, section 184(2) of the SFO concerning the giving of a false statement during an investigation undertaken by the Securities and Futures Commission (SFC), a statement made by the person previously in an investigation undertaken by the AIB is not admissible in evidence against the person in the proceedings.

³ See **Annex A**.

⁴ Please refer to paragraph 6 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 20 December 2005" (LC Paper No. CB(1)665/05-06(07)), as discussed by the Bills Committee at its meeting held on 12 January 2006.

- (a) whether it is necessary to set out a quorum requirement for the meetings of a FRRC;
- (b) how to deal with the situation where the number of members of a FRRC falls short of five members and, in this connection, whether the application of section 51(a) of the Interpretation and General Clauses Ordinance (Cap. 1) has been excluded by any contrary intention from the Bill; and
- (c) whether the FRC should consider appointing more than five members to a FRRC, and whether it is necessary to provide for an upper limit to the number of members of a FRRC.

6. Regarding paragraph 5(a), **section 1(2) of Schedule 6** to the Bill provides that the procedure for convening meetings of a FRRC and for the conduct of business at those meetings is, subject to any direction of the FRC, to be determined by the Committee. Since a FRRC is tasked to enquire into but not to adjudicate a case, we consider that latitude should be allowed for the FRC or the FRRC to decide the quorum requirement on its own. However, in view of the concerns of some Members, we aim to propose a Committee Stage Amendment (CSA) to expressly provide that the quorum for any meeting of a FRRC is to be half of its members.

7. Regarding paragraph 5(b), **section 3 of Schedule 6** provides that, if a vacancy occurs among the members of a FRRC, the FRC may appoint another member of the FRRP to fill the vacant membership without dissolving the FRRC itself. Alternatively, in the very unlikely situation where most or all of the members cannot or should not continue to serve, section 42(b) of Cap. 1⁵ will empower the FRC to dissolve the FRRC. When considering whether or not to fill the vacant membership or dissolve the FRRC entirely, the FRC must act lawfully, reasonably and for proper purposes. In situations where the FRC considers that a vacancy does not need to be filled in the light of circumstances, section 51(a) of Cap. 1⁶ will ensure that the powers of a FRRC shall not be

⁵ See **Annex A**.

⁶ See **Annex A**.

affected by such vacancy⁷. Moreover, the proposed quorum requirement in paragraph 6 above will ensure that a FRRC will not operate when more than half of its members are unable to perform their functions.

8. Regarding paragraph 5(c), **clause 41(1)** states that a FRRC is to consist of at least five members of the FRRP. While the appointment of FRRC members is a matter for the FRC to decide, we consider that the FRC may, where the situation warrants, appoint more than five members to a FRRC. In making the appointment, the FRC must act lawfully, reasonably and for proper purposes. We see no particular reason to propose an upper limit to the number of members of a FRRC.

ENQUIRY POWERS AND POST-ENQUIRY ACTIONS OF A FRRC

9. With respect to the enquiry powers and post-enquiry actions of a FRRC, some Members of and the Legal Adviser to the Bills Committee have invited the Administration to elaborate on the following issues -

- (a) whether it is justified to attach a less severe consequence to a failure to give information in the enquiry of a FRRC (c.f. **clause 45**) than that in the investigation of the AIB (c.f. **clauses 31 and 32**);
- (b) whether a certified public accountant failing to comply with an information-gathering requirement of the FRRC under **clause 43** should be disciplinable under the Professional Accountants Ordinance (PAO, Cap. 50);
- (c) how will **clauses 49 and 50** operate in practice, in the light of the concerns regarding possibility of prolonged legal proceedings;

⁷ Notwithstanding the application of section 51(a) of Cap. 1, we are reviewing with the Department of Justice, in response to Members' concerns, whether to expressly provide in the Bill that, for the avoidance of doubt, the powers of the FRRC shall not be affected despite any vacancy in membership.

- (d) the remedies available to the Stock Exchange to follow-up non-compliance of a listed entity's financial report with the accounting requirements as provided in the Listing Rules; and
- (e) in connection with (c) and (d) above, whether the proposed powers available to the FRRC to seek revision of defective financial reports are sufficient.

10. Regarding paragraph 9(a), failure to comply with an information-gathering requirement without reasonable excuse imposed by the AIB is an offence (c.f. **clause 31**), *or* may result in the court, on the application of the AIB, ordering compliance by the person with that requirement and punishing the person concerned as if he had been guilty of contempt of court (c.f. **clause 32**)⁸. On the other hand, a failure to co-operate with a FRRC with respect to an enquiry is not an offence *per se*, but a FRRC may apply to the court under **clause 45** (similar to **clause 32**) to compel the person to comply with the information-gathering requirement whereby the court may punish the person for the failure as if he had been guilty of contempt of court. We consider that the difference in the gravity of the consequences of a non-compliance with a requirement imposed by the AIB and a FRRC is justified according to the respective functions that the AIB and a FRRC pursue. The AIB will investigate auditors' irregularities and misconduct, which may be of more serious implications affecting the interests of the investing public and the market integrity. On the other hand, a FRRC will enquire into non-compliances with accounting standards or requirements which may often be technical in nature. Taking this into account, we do not consider it reasonable or justifiable to attach the same severe consequence to a failure to give information during a FRRC's enquiry⁹.

⁸ **Clauses 31(10)** and **32(4)** stipulate the provisions to prevent "double jeopardy". If a person who has not complied with a requirement imposed by the investigator is subject to a court order and punished as if he had been guilty of contempt of court under **clause 32**, he will not face a separate prosecution for a non-compliance with the same requirement under **clause 31**, and *vice versa*.

⁹ This is similar to the position of the United Kingdom Financial Reporting Review Panel. Under section 245F(4) of the United Kingdom (UK) Companies Act 1985 (see **Annex B**), the Panel may apply to the court for an order to compel the person concerned to produce the documents or provide the information or explanations as required. However, the failure *per se* is not an offence.

11. Regarding paragraph 9(b), we have consulted the HKICPA on the disciplinary provisions under the PAO. As noted in paragraph 10 above, **clause 45** already contains the provisions whereby a FRRC may enforce an information-gathering requirement imposed on a certified public accountant or other persons. In addition, the relevant powers applicable to an AIB's investigation are set out in **clauses 31** and **32**. As the Bill incorporates the necessary powers for the FRC for the purposes of compelling such compliances during investigations or enquiries, the HKICPA is of the view that, as a matter of principle, it will be preferable for the FRC to utilize the proposed powers conferred upon it under the above clauses of the Bill than to look to the Institute to do so under the PAO. In this regard, although section 34(1)(a)(vii) of the PAO¹⁰ provides that a failure or neglect of a certified public accountant to comply with an requirement of an HKICPA's Investigation Committee is disciplinable under the PAO, the HKICPA considers that the PAO is not generally intended to enforce the powers of statutory bodies other than the HKICPA¹¹. Consequently, the HKICPA opines that it is not necessary to add an express provision in the PAO to the effect that a certified public accountant failing to comply with a requirement imposed by the AIB or a FRRC should be concurrently disciplinable.

12. Regarding paragraph 9(c), since the proposed framework for a FRRC under the Bill is modelled on that of the United Kingdom Financial Reporting Review Panel (UK FRRP) under the Companies Act 1985¹², we consider that the UK's experience is particularly relevant. During the enquiry, the UK FRRP may ask directors of the company concerned to explain the apparent departures from the accounting requirements. If the UK FRRP is not satisfied by the directors' explanations, the Panel may suggest a more appropriate accounting treatment. The directors may then voluntarily revise the financial reports in the light of the suggestion. Moreover, if the case concerns financial reports issued under the listing rules, the UK FRRP may report

¹⁰ See **Annex A**.

¹¹ That said, the HKICPA considers that, in serious cases, disciplinary action may be invoked under section 34(1)(a)(x) of the PAO as a catch-all provision for conduct which would be reasonably regarded as bringing discredit upon the Institute or the accountancy profession.

¹² The UK FRRP has been statutorily authorized since 1991 to handle complaints about company financial reports and secure compliances by companies with the accounting requirements of the Companies Act 1985 through the application of a court order.

it to the UK Financial Services Authority.

13. Although the UK FRRP also possesses the power to apply to the court for mandatory revision of financial reports under section 245B of the Companies Act, it should be noted that **compliance following the enquiry has been voluntary and, to date, the UK FRRP has succeeded in resolving all cases without any recourse to court.** We envisage that the UK's experience may shed light on the future operation of **clauses 49** (concerning voluntary revision) and **50** (mandatory revision under a court order)¹³.

14. Regarding paragraph 9(d), the Listing Rules require listed entities to comply with the disclosure requirements as set out in Appendix 16 of the Listing Rules¹⁴. According to the Hong Kong Exchanges and Clearing Limited (HKEx), it will generally consider two courses of regulatory action in respect of the failure to comply with the Listing Rules' disclosure requirements: (i) corrective action to remedy a deficiency in disclosure; or (ii) disciplinary action to prevent a repetition of the rule breach¹⁵. In considering whether to require corrective action, HKEx will need to consider whether sufficient information about the effect of non-disclosure has been made available to the investing public at the time either by the listed entity or its auditors. HKEx also needs to take into account any legal constraints on the ability of a listed entity to issue revised financial reports¹⁶. We envisage that, where the FRC refers cases to HKEx, the findings of the FRRC may provide a solid foundation for HKEx to take follow-up actions under the Listing Rules.

¹³ **Clauses 49** and **50** of the Bill are formulated with reference to sections 245A and 245B of the UK Companies Act 1985 (see **Annex B**).

¹⁴ Appendix 16 of the Listing Rules set out the minimum financial information that a listed entity shall include in, among other things, its interim and annual financial statements, as well as other listing documents and circulars, in relation to the listed equity securities. The Appendix is downloadable from [http://www.hkex.com.hk/rule/listrules/MB%20App%2016%20\(E\).pdf](http://www.hkex.com.hk/rule/listrules/MB%20App%2016%20(E).pdf).

¹⁵ The remedies are set out in R2A.09 of the Listing Rules (see **Annex C**).

¹⁶ In this regard, following the recommendation by the Standing Committee on Company Law Reform in its Phase I of the Corporate Governance Review in 2001, we propose in **clauses 61** and **62** to amend the relevant provisions of the Companies Ordinance (Cap. 32) to empower companies to revise accounts and file the revised accounts with the Registrar of Companies.

15. Regarding paragraph 9(e), we consider that the proposed post-enquiry actions will be sufficient, at least at this initial stage, for the FRC to secure the removal of non-compliances in a listed entity's financial report¹⁷. The UK's experience has demonstrated that the proposed framework is effective in upgrading the quality of financial reporting and proportionate to the defects which the proposed powers are designed to remove. In fact, in view of the concerns of the investing public over the financial reporting of listed entities, we believe that the request made by the FRC for the entity in question to revise financial reports will already generate a considerable incentive for the entity to take remedial measures as appropriate.

IMMUNITY

16. Noting that the Administration agreed to consider proposing a CSA to include an additional immunity clause under **clause 53** to the effect that a person who complies with a requirement under the relevant provisions of this Ordinance shall not incur any civil liability to any person by reason only of that compliance, a Member asked whether such immunity will affect the "legal professional privilege" referred to in **clause 55**.

17. **Clause 55(1)** provides that, subject to **clause 55(2)**¹⁸, "this Ordinance does not affect any claims, rights, or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege". In this light, the proposed new immunity clause under **clause 53** will have no bearing on the "legal professional privilege" referred to in **clause 55**.

Financial Services and the Treasury Bureau February 2006

¹⁷ It should be noted that those consultees who commented on the enquiry powers of the FRRC in the Administration's consultation in February 2005 generally supported the proposal.

¹⁸ **Clause 55(2)** provides that **clause 55(1)** does not affect any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner.


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Chapter:	571	Title:	SECURITIES AND FUTURES ORDINANCE	Gazette Number:	L.N. 12 of 2003
Section:	187	Heading:	Use of incriminating evidence in proceedings	Version Date:	01/04/2003

(1) Where-

- (a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or
- (b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

the authorized person or the investigator (as the case may be) shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be).

(2) Notwithstanding any other provisions of this Ordinance, where-

- (a) an authorized person within the meaning of section 179 requires a person to provide or make an explanation or statement under that section; or
- (b) an investigator requires a person to give an explanation or further particulars or to give an answer to any question under section 183,

and the explanation or statement, the explanation or further particulars, or the answer (as the case may be) might tend to incriminate the person and the person so claims before providing or making the explanation or statement, giving the explanation or further particulars, or giving the answer (as the case may be), then the requirement as well as the explanation or statement, the explanation or further particulars, or the question and answer (as the case may be) shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 179(13), (14) or (15) or 184, or under section 219(2)(a), 253(2)(a) or 254(6)(a) or (b), or under Part V of the Crimes Ordinance (Cap 200), or for perjury, in respect of the explanation or statement, the explanation or further particulars, or the answer (as the case may be).

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Chapter: 1 Title: INTERPRETATION AND GENERAL CLAUSES Gazette Number:
ORDINANCE
Section: 42 Heading: **Power to appoint includes power to suspend, dismiss,
re-appoint, etc.** Version Date: 30/06/1997

Where any Ordinance confers a power or imposes a duty upon any person to make any appointment or to constitute or establish any board, tribunal, commission, committee or similar body, then the person having such power or duty shall also have the power-

- (a) to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in exercise of such power or duty;
- (b) to revoke the appointment, constitution or establishment of, or to dissolve, any board, tribunal, commission, committee or similar body appointed, constituted or established, in exercise of such power or duty, and to re-appoint, re-constitute or re-establish the same; and
- (c) to specify the period for which any person appointed in exercise of such power or duty shall hold such appointment:

Provided that where the power or duty of such person so to act is only exercisable upon the recommendation, or is subject to the approval or consent, of some other person, then such power shall only be exercisable upon such recommendation or subject to such approval or consent.

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Chapter: 1 Title: INTERPRETATION AND GENERAL CLAUSES
ORDINANCE Gazette Number:
Section: 51 Heading: Powers of board, etc. not affected by vacancy Version Date: 30/06/1997

Where any board, tribunal, commission, committee or similar body is established by or under any Ordinance, the powers of such board, tribunal, commission, committee or similar body shall not be affected by-

- (a) any vacancy in the membership thereof;
- (b) any defect in the appointment or qualification of a person purporting to be a member thereof; or
- (c) any minor irregularity in the convening of any meeting thereof.

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Chapter: 50 Title: PROFESSIONAL ACCOUNTANTS ORDINANCE Gazette Number: L.N. 152 of 2004
 Section: 34 Heading: **Disciplinary provisions** Version Date: 26/11/2004

(1) A complaint that-

- (a) a certified public accountant- (Amended 23 of 2004 s. 54)
- (i) has been convicted of any offence under Part V (Perjury) of the Crimes Ordinance (Cap 200);
 - (ii) has been convicted in Hong Kong or elsewhere of any offence involving dishonesty;
 - (iii) whether as a certified public accountant or not- (Amended 23 of 2004 s. 54)
 - (A) falsified or caused to be falsified any document;
 - (B) made any statement which is material and which he knows to be false or does not believe to be true, in respect of any document;
 - (iv) has been negligent in the conduct of his profession;
 - (v) without reasonable excuse, failed or neglected to comply with any direction issued under section 32F(2) and with which he was required by the Practice Review Committee to comply;
 - (vi) failed or neglected to observe, maintain or otherwise apply a professional standard;
 - (vii) without reasonable excuse, failed or neglected to comply with any requirement made under section 42D in relation to him by an Investigation Committee;
 - (viii) has been guilty of professional misconduct;
 - (ix) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council;
 - (x) was guilty of dishonourable conduct;
 - (xi) while a director of a corporate practice, rendered any service as, or purporting to be, a director of a company whose name did not appear in Part II of the register at the time when the service was rendered; or
 - (xii) being such a director, practised accountancy as such a director at a time when the corporate practice was covered by professional indemnity insurance either not at all or not to the extent required by this Ordinance;
- (b) a corporate practice-
- (i) or any of its directors-
 - (A) falsified or caused to be falsified any document;
 - (B) made any statement which is material and which any of its

directors knows to be false or does not believe to be true, in respect of any document;

- (ii) failed to comply with a requirement referred to in section 28D(6)(a) or (7) or ceased or failed to comply with any requirement of section 28D(2)(b) or (c) applying to it;
- (iii) rendered any service under a company name other than the name which then appeared in relation to the practice in the register;
- (iv) being such a practice, practised accountancy without being covered by professional indemnity insurance at all or to the extent required by this Ordinance; or
- (v) did or omitted to do something which, were the practice an individual certified public accountant, would reasonably be regarded as being dishonourable conduct by an individual,

shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels. (Amended 14 of 1992 s. 6)

(1AAA) If the Council decides not to refer the complaint to the Disciplinary Panels, the complainant who is aggrieved by the Council's decision may request the Council to refer the complaint to the Disciplinary Panels, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, refer the complaint to the Disciplinary Panels. (Added 23 of 2004 s. 36)

(1AA) The provisions of subparagraphs (iv) to (ix) of paragraph (a) of subsection (1) shall apply mutatis mutandis in relation to a corporate practice and accordingly, in addition to those specified in subsection (1)(b), a complaint under subsection (1) may be made against such a practice on any 1 or more of the grounds specified in those subparagraphs as so applied. (Added 85 of 1995 s. 16)

(1A) Where the Registrar has reason to believe that subsection (1)(a) or (b), or subsection (1)(a) as applied by subsection (1AA), applies to a certified public accountant or a corporate practice, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels. (Added 22 of 1977 s. 12. Amended 14 of 1985 s. 10)

(2) For the purposes of subsection (1)(a)(x) and (b)(v), "dishonourable conduct" (不名譽的行為) means an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession.

(3) A person who was a member of the Practice Review Committee at any time when a complaint was made by it under section 32D(5) shall not take part as a member of a Disciplinary Committee in any proceedings relating to such complaint. (Added 14 of 1992 s. 6)

(Amended 96 of 1994 s. 22; 85 of 1995 s. 16; 23 of 2004 ss. 36 & 54)

UK Companies Act 1985

Current through 9 December 2005

245A Secretary of State's notice in respect of annual accounts

(1) Where--

(a) copies of a company's annual accounts, directors' report or operating and financial review have been sent out under section 238, or

(b) a copy of a company's annual accounts, directors' report or operating and financial review has been laid before the company in general meeting or delivered to the registrar,

and it appears to the Secretary of State that there is, or may be, a question whether the accounts, report or review comply with the requirements of this Act, he may give notice to the directors of the company indicating the respects in which it appears to him that such a question arises or may arise.

(2) The notice shall specify a period of not less than one month for the directors to give him an explanation of the accounts, report or review or prepare revised accounts or a revised report or review.

(3) If at the end of the specified period, or such longer period as he may allow, it appears to the Secretary of State that the directors have not--

(a) given a satisfactory explanation of the accounts, report or review, or

(b) revised the accounts, report or review so as to comply with the requirements of this Act,

he may if he thinks fit apply to the court.

(4) The provisions of this section apply equally to revised annual accounts, revised directors' reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.

245B Application to court in respect of defective accounts

(1) An application may be made to the court--

(a) by the Secretary of State, after having complied with section 245A, or

(b) by a person authorised by the Secretary of State for the purposes of this section, for a declaration or declarator that the annual accounts of a company do not comply, or a directors' report or operating and financial review does not comply, with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report or review.

(2) Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.

(3) If the court orders the preparation of revised accounts, it may give directions with respect to--

(a) the auditing of the accounts,

(b) the revision of any directors' report, directors' remuneration report or summary financial statement, and

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts, and such other matters as the court thinks fit.

(3A) If the court orders the preparation of a revised directors' report or a revised operating and financial review it may give directions with respect to--

(a) the review of the directors' report or operating and financial review by the auditors,

(b) the revision of any directors' report, directors' remuneration report, operating and financial review or summary financial statement,

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report or review, and

(d) such other matters as the court thinks fit.

(4) If the court finds that the accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) it may order that all or part of--

(a) the costs (or in Scotland expenses) of and incidental to the application, and

(b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts or a revised report or review, shall be borne by such of the directors as were party to the approval of the defective accounts, report or review.

For this purpose every director of the company at the time of the approval of the accounts, report or review shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.

(5) Where the court makes an order under subsection (4) it shall have regard to whether the directors party to the approval of the defective accounts, report or review knew or ought to have known that the accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and it may exclude one or more directors from the order or order the payment of different amounts by different directors.

(6) On the conclusion of proceedings on an application under this section, the applicant shall give to the registrar for registration an office copy of the court order or, as the case may be, notice that the application has failed or been withdrawn.

(7) The provisions of this section apply equally to revised annual accounts, revised directors' reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.

245F Power of authorised persons to require documents, information and explanations

(1) This section applies where it appears to a person who is authorised under section 245C of this Act that there is, or may be, a question whether the a company's annual accounts, directors' report or operating and financial review comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).

(2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of--

(a) discovering whether there are grounds for an application to the court under section 245B; or

(b) determining whether or not to make such an application.

(3) Those persons are--

(a) the company;

(b) any officer, employee, or auditor of the company;

(c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.

(4) If a person fails to comply with a requirement under subsection (2), the authorised person may apply to the court for an order under subsection (5).

(5) If on such an application the court decides that the person has failed to comply with the requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this section compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.

(8) In this section "document" includes information recorded in any form.

**Rules Governing the Listing of Securities
on the Stock Exchange of Hong Kong Limited**

Disciplinary Procedures

- 2A.09 In addition to its powers to suspend or cancel a listing, if the Listing Committee finds there has been a breach by any of the parties named in rule 2A.10 of the Exchange Listing Rules it may:—
- (1) issue a private reprimand;
 - (2) issue a public statement which involves criticism;
 - (3) issue a public censure;
 - (4) report the offender's conduct to the Commission or another regulatory authority (for example the Financial Secretary, the Commissioner of Banking or any professional body) or to an overseas regulatory authority;
 - (5) ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;
 - (6) require a breach to be rectified or other remedial action to be taken within a stipulated period including, if appropriate, the appointment of an independent adviser to minority shareholders;
 - (7) in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the Exchange Listing Rules, state publicly that in the Exchange's opinion the retention of office by the director is prejudicial to the interests of investors;
 - (8) in the event a director remains in office following a public statement pursuant to (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;
 - (9) in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the Exchange Listing Rules, order that the facilities of the market be denied for a specified period to that issuer and prohibit dealers and financial advisers from acting or continuing to act for that issuer;

(10) take, or refrain from taking, such other action as it thinks fit, including making public any action taken pursuant to paragraphs (4), (5), (6), (8) or (9) above.