

## **Bills Committee on Companies Bill**

### **Follow-up actions for the meeting held on 17 February 2012 relating to Parts 19 and 20**

#### **Purpose**

This paper sets out the Administration's response to the issues raised by Members at the Bills Committee meeting on 17 February 2012 relating to Part 19 ("Investigations and Enquiries") and Part 20 ("Miscellaneous") of the Companies Bill (CB).

#### **Administration's response**

##### **Part 19**

##### **Clause 826(2)(b)**

2. Clause 826(2)(b), which re-enacts section 144(d) of the Companies Ordinance (Cap 32) (CO), provides that a body corporate is an "associated body corporate"<sup>1</sup> if the body corporate and the company are "substantially controlled by the same person" for the purposes of Part 19.

3. The meeting queried whether "same person" should be amended to "same persons" so that the provision would cover a body of persons.

4. According to section 3 of the Interpretation and General Clauses Ordinance (Cap 1), the meaning of "person" includes "any public body and any body of persons, corporate or unincorporate". It follows that "person" can be a "natural person" or "any public body or any body of persons, corporate or unincorporate". This definition applies to all ordinances in Hong Kong "save where the contrary intention appears"<sup>2</sup>. As such, it is not necessary to amend "person" to "persons".

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<sup>1</sup> In Part 19, the expression "associated body corporate" is used mainly in two contexts, namely:  
(a) The inspector may also investigate the affairs of an associated body corporate (clause 837); and  
(b) The inspector shall report on the affairs of the associated body corporate that he has investigated (pursuant to clause 837) so far as he thinks the result of his investigation on the associated body corporate is relevant (clause 845).

<sup>2</sup> *Lau Sau-Mui Fanny v. Pacific Realty Ltd* [1981] DCCJ 2745/1981.

5. It is noteworthy that if the inspector comes across any company which he considers it necessary to investigate but which is not an “associated body corporate”, the inspector may at any time in the course of the investigation, inform the Financial Secretary (FS) of this matter (clause 843(5)(a)). The FS may then consider appointing the inspector to investigate the affairs of that company pursuant to Division 2 of Part 19.

#### Clause 829(3)

6. The meeting enquired about the considerations that the FS would take into account in deciding whether it is in the public interest to investigate a company’s affairs, and the number of cases over the years in which the FS has invoked the power to appoint inspectors to investigate a company.

7. In general, the FS would only exercise his discretion to appoint an inspector if significant or great public interest is involved. The FS will consider a number of factors, against the facts of individual cases, in deciding whether a case involves significant or great public interest, including the scale and scope of the alleged complaints, the expected difficulties, costs and benefits involved in pursuing the investigation, and the availability of alternative remedies, etc.

8. According to our records, the FS has in the past appointed inspectors to investigate the affairs of 38 companies under the CO. The company names and the appointment dates are set out in Annex.

#### Clause 830(2)

9. The meeting asked the Administration to consider whether a time limit (instead of “within a reasonable time” as set out in this provision) should be specified for the inspector’s delivery of his/her appointment to the Registrar of Companies for registration.

10. The CO is currently silent on the timing for the inspector to deliver to the Registrar of Companies a notice of his/her appointment. The CB imposes the new requirement of “within a reasonable time after the appointment”, with a view to ensuring that the public register is updated within a reasonable time while providing some flexibility to the inspector to take account of all the relevant circumstances.

11. Given the meeting's concern, we will introduce a Committee Stage Amendment (CSA) to specify the time limit as "15-days" to strike a reasonable balance between the provision of flexibility to the inspector and the need to keep the public register up-to-date.

#### Clause 854(1)

12. The meeting suggested that the Administration should consider amending the provision such that the expenses of an investigation should be reasonable.

13. We agree with the suggestion and will consider moving a CSA to amend clause 854(8)(a) so that the expenses of an investigation will include the "reasonable" expenses incurred for the purposes of the investigation.

#### Clause 865(1)

14. The meeting suggested the provision be amended such that the information to be obtained should be specified before a Magistrate's warrant is issued and that the scope of the power under this provision should be confined to specific provisions (instead of "Division 2" (clause 865(1)(a)) and "Division 3" (clause 865(1)(b)) of Part 19.

15. We agree with the suggestion and propose to move a CSA to add a provision to clause 865 ("Magistrate's warrants") so that in addition to the matters already mentioned in clause 865(1), the applicant for a search warrant should also specify the following matters in the information to be laid before a Magistrate:

- (a) the nature of the record or document that the applicant requires;  
and
- (b) the relevant provisions (in Division 2 or Division 3) under which the applicant is empowered to require the record or document.

#### Clause 873

16. The meeting suggested the Administration to reconsider whether it is appropriate or necessary to adopt the term "informer" in this provision as it is not a defined term and it bears the same meaning as "person giving information" in this context.

17. Although the word “informer” is not defined, its meaning is well-established. According to the Hong Kong English-Chinese Legal Dictionary, “informer” means “a person who supplies information to the police or other investigating authorities about criminal activities, often for the purpose of more lenient sentence and generally, on the basis that his identity and the information given will remain confidential...”. The word is also adopted in various Hong Kong ordinances<sup>3</sup> without being defined.

18. As the purpose of clause 873 is to protect “informers”, it is necessary to keep an express reference to cover them. Thus, we are not inclined to change the reference of “informer” in clause 873(6)(a). In addition to an “informer”, in clause 873(6)(b), “protected person” means “a person who has assisted a specified officer” with respect to an investigation or enquiry. This would be wide enough to include a person who has supplied information either voluntarily or upon request.

#### Clause 880

19. The meeting asked if there was any remedy available for any non-compliance with the requirements made by a person appointed by a company to investigate the company’s affairs under clause 880.

20. Under clause 881, if an officer or agent of a company fails to comply with a requirement imposed on the officer or agent under clause 880(2), the appointed person may apply to the Court for an inquiry into the failure. The Court may, if it is satisfied that the officer or agent has without any reasonable excuse failed to comply with the requirement, punish the officer or agent (as the case may be) in the same manner as if the officer or agent had been guilty of contempt of court.

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<sup>3</sup> For example, Cap 60 (Import And Export Ordinance) section 38: Informers; Cap 109 (Dutiable Commodities Ordinance) section 44: Informers; Cap 132 (Public Health and Municipal Services Ordinance) section 76: Protection of informers; Cap 134 (Dangerous Drugs Ordinance) section 57: Protection of informers; Cap 145 (Control of Chemicals Ordinance) section 17: Protection of informers; Cap 151 (Societies Ordinance) section 38: Protection of informers; Cap 201 (Prevention of Bribery Ordinance) section 30A: Protection of informers; Cap 227 (Magistrates Ordinance) section 50: Penalty on common informer for compounding without permission of magistrate; Cap 528 (Copyright Ordinance) section 127: Protection of informers in criminal proceedings; Cap 544 (Prevention of Copyright Piracy Ordinance) section 36C: Protection of informers; Cap 549 (Chinese Medicine Ordinance) section 148: Protection of informers; Cap 586 (Protection of Endangered Species of Animals and Plants Ordinance) section 45: Protection of informers; Cap 588 (Financial Reporting Council Ordinance) section 52: Protection of informers.

## **Part 20**

### **Clause 889(1)(b)**

21. The meeting queried whether it is appropriate to reward a person on whose information or at whose suit a fine is recovered.
22. We agree that it is not appropriate to retain clause 889(1)(b) and will introduce a CSA to remove the provision.
23. Clause 889(1)(b) re-enacts section 352 of the CO which in turn has its origin in section 66 of the United Kingdom (UK) Companies Act 1862. The equivalent provision in the UK was repealed in the UK Companies Act 1985 and there is no equivalent provision in Australia or Singapore.
24. For clause 905(2)(b), which has similar wording as clause 889(1)(b), no CSA is required as it is a saving provision.

### **Clause 896**

25. The meeting considered that clause 896 and Schedule 8 should be removed from the CB as the proposals relating to paperless holding and transfer of shares and debentures contained in Schedule 8 are subject to change pending the introduction of a separate bill on the scripless securities market.
26. Clause 896 and Schedule 8 re-enact the technical amendments set out in the Companies (Amendment) Ordinance 2010 passed on 7 July 2010 to remove, or provide exceptions to, the limitations in the CO that compel the use of paper documents of title and paper instruments of transfer in relation to shares and debentures.
27. The above amendments in the Companies (Amendment) Ordinance 2010 represent an important step in the legislative process to promote the development of a scripless market in Hong Kong. As the Administration had explained to the Bills Committee on the Companies (Amendment) Bill 2010, these amendments would come into effect when the market was ready to implement the scripless securities market in Hong Kong. The Administration is working closely with the Securities and Futures Commission and the trade on the additional legislative proposals needed to implement the scripless market in Hong Kong.

28. Given that clause 896 and Schedule 8 seek to re-enact the technical amendments set out in the Companies (Amendment) Ordinance 2010 passed on 7 July 2010 and in view of the importance of these amendments to the implementation of the scripless market in Hong Kong, we do not consider it appropriate to delete clause 896 and Schedule 8 from the CB.

Schedule 10 – section 141

29. The meeting suggested the heading before section 141 of Schedule 10 be amended from “Other Transitional and Saving Arrangements” to “Transitional and Saving Arrangements for Part 20” as section 141 relates to Part 20. We agree with the proposal and will move a CSA in this regard.

**Financial Services and the Treasury Bureau**  
**Companies Registry**  
**9 February 2012**

**Annex**

**Cases where the Financial Secretary has appointed inspectors under  
the Companies Ordinance (Cap 32)**

<b>Date of appointment of inspector</b>	<b>Company name</b>
03-05-1999	Peregrine Fixed Income Limited
03-05-1999	Peregrine Investments Holdings Limited
13-01-1993	Maddis Company Limited
23-10-1992	Mandarin Development Limited
23-10-1992	Fulldiamond Limited
17-10-1992	Hok Choi Limited
17-10-1992	Cropland Limited
17-10-1992	Truly Nominees Limited
17-10-1992	Excel-In Limited
28-08-1992	World Trade Centre Group Limited*
28-08-1992	Tomson Pacific Limited*
14-08-1992	Allied Group Limited
14-08-1992	Paragon Holdings Limited*
14-08-1992	Crusader Holdings Limited*
14-08-1992	Wai Yick Limited*
14-08-1992	Allied Properties (H.K.) Limited
01-03-1990	Paladin Ltd.
09-06-1989	Mandarin Resources Corporation Limited*
01-06-1989	Jademan (Holdings) Limited*
03-12-1986	Asean Resources Limited
30-07-1985	Val Nominees Ltd.
30-07-1985	Charic Investments Limited
30-07-1985	Investment Consolidated Ltd.

<b>Date of appointment of inspector</b>	<b>Company name</b>
30-07-1985	Consortium Investment Ltd.
30-07-1985	Pan East Development Corporation Limited
11-07-1985	Standard Nominees Ltd.
11-07-1985	C.T. Nominees Ltd.
11-07-1985	Miland Nominees Ltd.
22-04-1985	Perak Pioneer Ltd.
22-04-1985	Plessey Investments Limited
22-12-1984	Deak-Perera Far East Ltd.
29-04-1980	Nugan Hand (Hong Kong) Limited
02-08-1977	MAF Credit Limited*
13-11-1974	Asia Lands and Properties Limited*
13-11-1974	Kao Shing Properties and Finance Limited*
24-10-1974	Paul Lee Engineering Company Limited
29-01-1974	East Asia Industrial & Commercial Services Limited
22-04-1971	Fund of Asia (Management), Limited

\* These companies have changed their names afterwards