

Bills Committee on Companies Bill

Follow-up actions to be taken by the Administration for the meeting on 29 March 2011

The Administration is requested to take the follow-up actions below to address the concerns raised by members.

Part 1

The formulation of "responsible person" (Clause 3)

1. In relation to the proposal to replace the formulation of "officer who is in default" in the existing Companies Ordinance ("CO") by a new formulation of "responsible person" (which is modelled on the UK Companies Act 2006) in the Bill, members have expressed concern about the prosecution thresholds and legal liabilities of officers, directors or shadow directors under the two formulations. In addition, since "responsible persons" of companies providing professional services, e.g. architectural and engineering firms, are often professionals who are already subject to legal requirements under other legislations, there are concerns about the application of the definition of "responsible person" to these firms and the legal liabilities of professionals of these firms. To address the above concerns, the Administration is requested:
 - (a) To provide a comparison of the formulations of "officer who is in default" and "responsible person", including:
 - (i) examples to elaborate the differences in prosecution threshold and legal liabilities of officers, directors or shadow directors under the formulations;
 - (ii) clarification on whether the prosecution threshold under the existing CO and under the Bill covers or will cover "negligent omissions" of officers, directors or shadow directors; and
 - (iii) explanation on the impact on the prosecution threshold with the deletion of "knowingly and willfully" from the definition of "responsible officer";

- (b) To explain the difference in application of the definition of "responsible person" to an officer, a director or shadow director in respect of an ordinary company and a company providing professional services, e.g. an architectural firm; and
- (c) To provide information on:
 - (i) relevant discussion on the formulation of "responsible person" during the enactment of the UK Companies Act 2006; and
 - (ii) prosecution against officers, directors or shadow directors under the UK Companies Act 2006.

Part 3 and Part 16

Allowing a company to appeal to the Administrative Appeals Board

2. Members have expressed concern about the proposal under clause 104 and clause 772 which allows companies to appeal to the Administrative Appeals Board ("AAB") against certain decisions made by the Registrar instead of to the court. The Administration is requested to provide information on:
 - (a) the functions and composition of the Administrative Appeals Board ("AAB"); and
 - (b) the reasons for allowing companies to appeal to AAB.

Authorized representatives of non-Hong Kong companies

3. There is concern about the legal liabilities of authorized representatives of non-Hong Kong companies for acts on behalf of such companies in Hong Kong, in particular the representatives' liabilities for acts under the instruction of such companies which would contravene local legislations. The Administration is requested to provide information on:
 - (a) the services and duties that authorized representatives of non-Hong Kong companies generally provide and perform; and

- (b) the legal liabilities of authorized representatives under the Bill and for actions taken on behalf of non-Hong Kong companies in Hong Kong.

Council Business Division 1
Legislative Council Secretariat
12 April 2011