

**Bills Committee on
Companies (Amendment) Bill 2003**

**Follow-up actions arising from the discussion
at the meeting on 2 October 2003 –
Schedule 4 of the Companies (Amendment) Bill 2003**

Introduction

This paper sets out the outcome of the follow-up actions (relating to Schedule 4 of the Companies (Amendment) Bill 2003) arising from the discussion at the meeting on 2 October 2003.

Effect of an inspection order on a contractual agreement

2. The proposed section 152FA(1) provides that subject to certain requirements, the court may make an order which authorizes the inspection of the records of a specified corporation. As a general principle, an inspection order granted by the court in pursuance of a statutory provision should prevail over any contractual obligation for non-disclosure. A contractual obligation not to reveal information per se is not considered as a separate head of privilege unless one can claim public interest immunity. We do not consider it necessary to specify in the statute that the requirement to disclose information or documents in pursuance of an inspection order under the proposed section 152FA(1) should override any contractual agreement on non-disclosure.

**Contractual or common law liabilities arising from
the disclosure of information under the proposed section 152FA**

3. Generally speaking, a person would not incur liability for breaching a (contractual) undertaking of non-disclosure if the disclosure is made in pursuance of an inspection order since compulsion under the law is usually an exception (either by express provision or in some cases by implication) to the obligation of non-disclosure. That said, if the Bills Committee finds it necessary, we are willing to consider including in the Bill a doubt avoidance provision along the same lines as in existing section 145(3B)¹ of the Companies Ordinance.

Financial Services Branch
Financial Services and the Treasury Bureau
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¹ Existing section 145(3B) provides, among other things, that a person who complies with any requirement under existing section 145 of an inspector investigating the affairs of a company or other body corporate shall not incur any liability to any person by reason only of that compliance.