

**Bills Committee on
Companies (Amendment) Bill 2003
Schedule 4 – Amendments to the Companies Ordinance
relating to Shareholder Remedies
Clause-by-clause examination**

At **Annex** is a mark-up version of those provisions relating to inspection order in Schedule 4 of the Companies (Amendment) Bill 2003 to which the Administration would like to propose amendments, having taken into account views expressed at previous meetings of the Bills Committee. These provisions are the proposed sections 152FA, 152FB, 152FC and 152FD. The reasons for the amendments are set out in the footnotes.

Financial Services Branch
Financial Services and the Treasury Bureau
February 2004

3. Sections added

The following is added immediately after section 152F -

"Inspection of Specified Corporations"

Records by Members

152FA. Order for inspection

(1) Subject to sections 152FD and 152FE, on application by a member (in this section referred to as "applicant") of a specified corporation with the consent in writing of such number of its members as is specified in subsection (2)¹, the court may make an order -

- (a) authorizing the applicant to inspect any records of the specified corporation; or
- (b) authorizing a person (whether or not a member of the specified corporation) other than the applicant to inspect any such records on behalf of the applicant.

(2) For the purposes of subsection (1), the following number of members are required to consent in writing -

- (a) any number of members (including the applicant) representing not less than one-fortieth of the total voting rights of all members having at the date of the application a right to vote at any

¹ In response to Members' suggestion, these amendments aim to impose a minimum shareholding requirement or a minimum number of shareholders requirement for making an application for an order to inspect the records of a specified corporation under the proposed section 152FA.

general meetings of the specified corporation; or
(b) not less than 50 members (including the applicant)
holding shares in the company on which there has
been paid up an average sum, per member, of not
less than \$2000².

(23) The court may only make an order under subsection (1) if it is satisfied that -

- (a) the application is made in good faith; and
- (b) the inspection applied for is for a proper purpose having regard to the interests of both the relevant specified corporation and the applicant³.

~~(3) If the court makes an order under subsection (1), it shall, after taking into account the facts and circumstances of the application, consider whether it is necessary to make an order limiting the use that the following persons may make of the information or document obtained as a result of the inspection of any records pursuant to the order made under that subsection—~~

- ~~(a) the applicant; and~~
- ~~(b) where the court authorizes a person other than the applicant to inspect the records, the person who inspects the records,~~

~~and where the court considers it necessary to do so, it may make~~

² See Footnote 1.

³ In response to Members' suggestion, these amendments aim to delete the phrase "having regard to the interests of both the relevant specified corporation and the applicant" to more accurately reflect our policy intent, and make the wording of the proposed section 152FA(2)(b) (now section 152FA(3)(b)) consistent with the equivalent provision in the Australian Corporations Act 2001.

~~such an order on such terms and conditions as it thinks fit.~~⁴

(4) Any person who is authorized by the court to inspect the records of a specified corporation may make copies of the records unless the court orders otherwise.

(5) Where a person (the first-mentioned person) who is required by an order made under this section to produce records for inspection has entered into a confidentiality agreement with another person that prevents the first-mentioned person from releasing the records, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of producing those records in compliance with that order⁵.

152FB. Ancillary orders

Subject to sections 152FD and 152FE, if the court makes an order under section 152FA, it may make any other orders it considers appropriate, including -

- (a) an order requiring the specified corporation that is subject to the order made under section 152FA or any of its officers to produce any records to the person who is authorized to inspect the records;
~~and~~
- (b) an order specifying the records that may be inspected by that person; and

⁴ In response to Members' comments on the Hong Kong Society of Accountants' proposal, these amendments aim to make it clear that the information or document obtained as a result of an inspection order should be used only in relation to the purpose for which it was sought unless the court orders otherwise.

⁵ In response to Members' comments, these amendments aim to make it clear that a person will not incur any civil liability in relation to a confidentiality agreement arising from his disclosure of information in compliance with an inspection order.

(c) an order requiring the applicant to pay the expenses reasonably incurred by the specified corporation in the inspection⁶.

152FC. Disclosure or use of information or document obtained as a result of inspection

(1) Subject to section 152FE, ~~no~~ a person who obtains any information or document ~~obtained~~ as a result of an inspection under section 152FA shall **not**, without the previous consent in writing of the relevant specified corporation, ~~be disclosed~~ it to any other person, **except to the applicant where the court authorizes a person other than the applicant to carry out the inspection⁷**, unless the disclosure is -

- (a) required with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, ~~or any investigation carried out in Hong Kong in accordance with law⁸~~;
- (b) permitted in accordance with an order made under section 152FA or 152FB; or
- (c) permitted in accordance with law or a requirement made under law.

(2) Subject to section 152FE and subsection (1), an applicant shall not, unless the court otherwise orders, use any information

⁶ In response to Members' suggestion, these amendments aim to make it clear that the court may require an applicant to pay the expenses reasonably incurred by a specified corporation in the inspection.

⁷ See Footnote 4.

⁸ In response to Members' comments, these amendments aim to delete the exception whereby the information or document obtained as a result of an inspection order may be disclosed with a view to or for the purpose of any investigation carried out in Hong Kong in accordance with law.

or document obtained as a result of an inspection under section 152FA for purposes other than the proper purpose referred to in section 152FA(3)(b)⁹.

(3) Subject to section 152FE and subsection (1), where the court authorizes a person other than the applicant to carry out an inspection, that person shall not, unless the court otherwise orders, use any information or document obtained as a result of the inspection for purposes other than delivering it to the applicant¹⁰.

(24) A person who contravenes this section shall be guilty of an offence and liable to imprisonment and a fine¹¹.

152FD. Saving for solicitors and bankers

(1) Nothing in sections 152FA and 152FB, or any order made under any of those sections, shall authorize a person to inspect any records containing a privileged communication made by or to a solicitor in that capacity.

(2) Where the specified corporation that is subject to an order made under section 152FA is a specified corporation carrying on the business of banking, nothing in sections 152FA and 152FB, or any order made under any of those sections, shall authorize a person to inspect any records of the specified corporation relating to the affairs of any of its customers unless the court orders that it is necessary to do so for the proper purpose referred to in

⁹ See Footnote 4.

¹⁰ See Footnote 4.

¹¹ In response to Members' suggestion, these amendments aim to provide an offence provision for improper use of information or document obtained as a result of an inspection order.

section 152FA(3)(b)¹².**152FE. Protection of personal data**

Nothing in sections 152FA, 152FB and 152FC, or any order made under section 152FA or 152FB, shall authorize the collection, retention and use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).".

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**7. Punishment of offences under this
Ordinance**

(1) The Twelfth Schedule is amended by adding -

"152FC(~~2~~**3**) Person disclosing On \$150,000 -
or using¹³ indictment and 2
information or years
document Summary level 5 -".
obtained as a and 6
result of an months
inspection under
section 152FA
contrary to
section 152FC(1)
or (2)

¹² In response to Members' comments, these amendments aim to provide saving for bankers along the lines of existing section 152F.

¹³ See Footnote 11.

