

**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 revised preliminary draft 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. The reasons for the amendments are set out in the footnotes.

Financial Services Branch  
Financial Services and the Treasury Bureau  
March 2004

SCHEDULE 4

[ss. 2 & 4]

AMENDMENTS TO THE COMPANIES ORDINANCE  
RELATING TO SHAREHOLDERS' REMEDIES

**1. Interpretation**

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding -

"“specified corporation” (指明法團) means a company or a non-Hong Kong company;”.

(2) Section 2 is amended by adding -

“(8A) In sections 152FA, 152FB and 152FD, the expression “record” (紀錄) includes book and paper.”.

**2. Proceedings on inspector's report**

Section 147(2)(b) is amended -

(a) by adding “where the body is a specified corporation,” before “that”;

(b) by repealing “body corporate” and substituting “specified corporation”.

**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, 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) 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 applicant.~~

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

~~(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.~~

**152FA. Order for inspection**

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

(a) authorizing the applicant or any one or more of such members applying as 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.<sup>1</sup>

(2) For the purposes of subsection (1), an application may be made by -

(a) any number of members 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 a general meeting of the specified corporation;

(b) any number of members holding shares in the specified corporation on which there has been paid up an aggregate sum of not less than \$100,000; or

(c) not less than five members.<sup>2</sup>

(3) 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.<sup>3</sup>

(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) A person who complies with an order made under this section or section 152FB to produce records for inspection shall not be liable for any civil liability or claim whatever to any person

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<sup>1</sup> 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.

<sup>2</sup> See Footnote (1).

<sup>3</sup> 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.

by reason only of that compliance.<sup>4</sup>

#### **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-
- (c) an order requiring the applicant to pay the expenses reasonably incurred by the specified corporation in the inspection.<sup>5</sup>

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

~~(1) Subject to section 152FE, no information or document obtained as a result of an inspection under section 152FA shall, without the previous consent in writing of the relevant specified corporation, be disclosed to any other person, 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 law;~~
- ~~(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.~~

<sup>4</sup> In response to Members' comments, these amendments aim to make it clear that a person will not incur any civil liability from his disclosure of information in compliance with an inspection order.

<sup>5</sup> 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.

~~(2) A person who contravenes this section shall be guilty of an offence and liable to imprisonment and a fine.~~

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

(1) Subject to section 152FE, the applicant or a person who is authorized to inspect the records of a specified corporation under section 152FA shall not, without the previous consent in writing of the specified corporation, disclose any information or document obtained as a result of an inspection under section 152FA to any other person, except to any other applicants or the applicant, unless the disclosure is -

(a) required with a view to the institution of, or otherwise for the purposes of, any criminal proceedings;<sup>6</sup>

(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.<sup>7</sup>

(2) Subject to section 152FE and subsection (1), the applicant or a person who is authorized to inspect the records of a specified corporation under section 152FA shall not, unless the court otherwise orders, use any information or document obtained as a result of an inspection order under section 152FA for purposes other than the proper purpose referred to in section 152FA(3)(b).<sup>8</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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 ought unless the court orders otherwise.

<sup>8</sup> See Footnote (7).

(3) A person who contravenes this section shall be guilty of an offence and liable to imprisonment and a fine.<sup>9</sup>

**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) Nothing in sections 152FA and 152FB, or any order made under any of those sections, shall authorize a person to inspect the records of a specified corporation carrying on the business of banking that relate to the affairs of its customers.<sup>10</sup>

**152FE. Protection of personal data**

Nothing in sections 152FA, 152FB and 152FC, or any order made under any of those sections ~~section 152FA or 152FB~~<sup>11</sup>, shall authorize the collection, retention and or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486).".

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

(1) The Twelfth Schedule is amended by adding -

"152FC( <del>32</del> )	Person	On	\$150,000	-
	disclosing <u>or</u>	indictment	and 2	
	<u>using</u>	information or	years	
	document	Summary	level 5	-".
	obtained as a	document	and 6	
	result of an	obtained as a	months	

<sup>9</sup> 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 inspector order.

<sup>10</sup> In response to Members' comments, these amendments aim to provide saving for bankers along the lines of existing section 152F.

<sup>11</sup> Amendments consequential to Footnote (7).

inspection  
under section  
152FA contrary  
to section  
152FC(1) or (2)

(2) The Twelfth Schedule is amended, in the entry relating to section 168A(4), in the second column -

- (a) by repealing "Company" and substituting "Specified corporation";
- (b) by repealing "company's" and substituting "specified corporation's".