

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

**Follow-up actions arising from the discussion  
at the meeting on 20 May 2004**

**Introduction**

This paper sets out the outcome of the follow-up actions arising from the discussion at the meeting on 20 May 2004.

**Prohibition of Partnerships with more than Twenty Members**

*To clarify the effect(s) of the proposed deletion of section 345 of the Companies Ordinance (Cap. 32) (section 44 of Schedule 3 of the Bill), in particular whether an existing partnership consisting of more than 20 persons and to which existing section 345(1) applies would be automatically legalized after enactment of the proposed amendment, and hence the partnership concerned shall have the legal capacity to sue.*

2. The effect of contravening Section 345 of Companies Ordinance (CO) is that the “partnership” would be incapable of existence or continued existence. According to Palmer’s Company Law, such a “partnership” is “a phantom. It has no legal existence”. In other words, where there is a group of over 20 persons carrying on any business that has for its object the acquisition of gain by the partnership before the repeal of Section 345 and who are caught by Section 345(1), the law does not recognise the existence of such “partnership”.

3. After the repeal of Section 345, if the facts and circumstances, including the rules listed in section 4 of the Partnership Ordinance, (a copy of which is at **Annex**) indicate that as between those persons of the group, a partnership has been formed or exists on or after the repeal of section 345, there is nothing in the law that prohibits formation or existence of such partnership.

**Financial Services Branch  
Financial Services and the Treasury Bureau  
May 2004**



**Chapter: 38**

**Title: PARTNERSHIP ORDINANCE**

**Section: 4**

**Heading: Rules for determining existence of partnership**

**Version Date: 30/06/1997**

In determining whether a partnership does or does not exist, regard shall be had to the following rules-

- (a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
- (c) the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular-
  - (i) the receipt by a person of a debt or other liquidated amount, by instalments or otherwise, out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
  - (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
  - (iii) a person being the widow or child of a deceased partner, and receiving by way of

annuity a portion of the profits made in the business in which the deceased person was a partner, is not, by reason only of such receipt, a partner in the business or liable as such;

(iv) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such: Provided that the contract is in writing and signed by or on behalf of all the parties thereto; and

(v) a person receiving, by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not, by reason only of such receipt, a partner in the business or liable as such.