

**Extract from Minutes of meeting of Panel on Financial Affairs
held on 7 April 2003**

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IV Briefing on the legislative proposals on the Companies (Amendment) Bill 2003

(LC Paper No. CB(1) 1133/02-03(06))

5. At the invitation of the Chairman, Deputy Secretary for Financial Services and the Treasury (Financial Services)(DS(FS)) briefed members on the proposals to amend the Companies Ordinance (CO) (Cap. 32) to facilitate offers of shares and debentures, enhance shareholder remedies, define "subsidiary" for the purposes of group accounts, enable electronic incorporation and update the provision on partner limit. The Administration was drafting the above legislative amendments with a view to including them in the Companies (Amendment) Bill 2003 (the Bill) to be submitted to Legislative Council (the Council) in the 2002-03 session.

Discussion with members

Access to company records

6. Noting that the proposal allowing shareholders' access to company records might be subject to abuse, Mr Henry WU enquired about checks and balances to be put in place to address the problem. In reply, DS(FS) explained that as the order for inspection of records would be made by the court on condition that the applicant was acting in good faith and the inspection was for a proper purpose, sufficient checks and balances would be provided in the system.

Facilitation in the offers of shares and debentures

7. Regarding proposals to facilitate the offer of shares and debentures (i.e. paragraphs 6 and 7 of the paper), Mr James TIEN asked how investors would be protected against misleading or false information disclosed by companies on their business and performance in its marketing materials. In reply, Mr William PEARSON, Director, Corporate Finance, Securities and Futures Commission remarked that only factual and procedural rather than promotional information would be permitted in the issue of "awareness advertisements". Such advertisements would not constitute prospectuses nor prohibited advertisements under relevant securities laws.

Definition of "subsidiary" for the purposes of group accounts

8. In response to Mr James TIEN's question, DS(FS) explained that the definition of a subsidiary under section 2(4) of CO was narrower than those adopted in the International Accounting Standards (IAS) and the Hong Kong Statements of Standard Accounting Practice (SSAP), the Administration considered it necessary to amend the statutory definition to more closely align with them.

Action

9. As to Mr James TIEN's enquiry about whether accounting rules and regulations would be changed accordingly to allow for the calculation of tax on a group account basis so that losses incurred by subsidiaries would offset profits of the parent company, DS(FS) confirmed that the proposed changes would not affect the present tax regime.

Reference to overseas experience

10. Mr Henry WU remarked that the approach of making reference to company laws of different overseas jurisdictions might result in inconsistencies in the legislation and cautioned against the piecemeal adoption of systems in overseas legislation. In reply, DS(FS) advised that the Administration's policy was to adopt the best practices of different overseas jurisdictions. In working out the current proposals on shareholder remedies, reference had been made to relevant legislation in Australia as it had a well-developed regime for protecting shareholders' rights. On the definition of subsidiary, reference was made to the IAS and UK Companies Act as the UK's accounting system and company law regime were similar to those in Hong Kong.

11. The Chairman opined that it would facilitate members in scrutinizing the Bill if the Administration would provide information comparing the legislation of overseas jurisdictions and the present proposals. He urged the Administration to provide the information when introducing the Bill into the Council.

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