LC Paper No. CB(1)825/04-05(01)

Bills Committee on Companies (Amendment) Bill 2004
Third meeting on 13 January 2005

List of follow-up actions to be taken by the Administration

1. Operation of the "dominant influence test"

To facilitate members' understanding of the operation of the "dominant influence test" for determining the relationship between parent undertakings and subsidiary undertakings, and the preparation of group accounts accordingly, the Administration is requested to provide a paper, with the aid of diagrams/charts/tables, covering the following points:

(a) To illustrate with examples the operation of the "dominant influence test" and the preparation of group accounts under various possible scenarios, with reference to the proposed definition of "undertaking" in section 1 and the proposed provisions in sections 2 and 3 of the proposed Twenty-third Schedule to the Companies Ordinance (CO). Some of the possible scenarios are as follows:

- A parent undertaking ("A") has a subsidiary undertaking ("B"), which in turn is the parent undertaking of other undertakings ("C" and "D");
- A parent undertaking ("E") has a subsidiary undertaking ("F"), which is not a body corporate and holds certain voting rights of the parent undertaking.

(b) To clarify whether the proposed definition of "undertaking" in section 1 of the proposed Twenty-third Schedule to the CO is intended to cover "an individual";

(c) Section 2(1) of the proposed Twenty-third Schedule to the CO sets out the various criteria under which an undertaking is defined to be a parent undertaking in relation to another undertaking. As pointed out in the Assistant Legal Adviser's letter dated 24 December 2004, it appears that more than one undertaking can satisfy the criteria and become the parent undertakings of a subsidiary undertaking. Please clarify the policy intent in this aspect and the obligation of these parent undertakings under the CO in preparing the group accounts;

(d) In respect of section 2(3) of the proposed Twenty-third Schedule to the CO, please clarify the policy intent and consider the need to improve the drafting to reflect the policy intent; and

(e) Section 3(3) of the proposed Twenty-third Schedule to the CO provides that "[t]he voting rights in an undertaking referred to in subsection (1) shall be reduced by any rights held by the

undertaking itself". The proposed provision is not clear. In particular, the following points need to be clarified:

- What is "an undertaking referred to in subsection (1)"? In the various possible scenarios under item (a) above, which of the undertakings will be covered by section 3(3)?
- What is the meaning of "any rights held by the undertaking itself"?
- How is the off-setting of voting rights between the concerned undertakings conducted? What would be the impact on the concerned undertakings if the result of off-setting is zero?

2. Impact of the Bill on the asset-securitization market in Hong Kong

Given the industry's concern about the possible negative impact of the Bill on the development of asset-securitization market in Hong Kong, the Bills Committee agrees that the Hong Kong Mortgage Corporation Limited, the Hong Kong Capital Markets Association, the Asian Securitization Network, and academics of the relevant field should be invited to attend the meeting on 24 February 2005 to give views on the subject. To facilitate the Bills Committee's consideration, the Administration is requested to compile information about the provisions, rules, and practices adopted by other jurisdictions for special purpose entities (SPEs) in relation to the preparation of companies' group accounts, including whether carve-outs and off-balance sheet treatment are provided for SPEs.

3. Proposed "true and fair view override" provisions

To address members' concern that the proposed amendments to section 126 of the CO are inconsistent with those to section 128(3), the Administration is requested to review the proposed provisions and provide the following information:

(a) The policy intent for introducing the proposed amendments to section 126 and section 128(3) of the CO;

(b) On the proposed subsection (3)(c) of section 128 of the CO, how the directors of the undertaking could determine whether the disclosure of information is "harmful to the business" of the undertaking or of any of its subsidiaries;

(c) On the proposed subsection (3)(d) of section 128 of the CO, why the Financial Secretary is empowered to exempt an undertaking from the requirement of disclosing information relating to its subsidiary; and

(d) Provisions of relevant legislation in other jurisdictions.

Council Business Division 1
Legislative Council Secretariat
14 January 2005