

**Bills Committee on Companies (Amendment) Bill 2004
Fourth meeting on 3 February 2005**

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

1. Determination of parent and subsidiary relationship between entities
 - (a) The Administration has undertaken to move a Committee Stage amendment (CSA) to the definition of “undertaking” in section 1(1) of the proposed Twenty-third Schedule to the Companies Ordinance (CO) (proposed 23rd Schedule) to reflect the policy intent that the definition does not cover “an individual” (paragraph 9 of LC Paper No. CB(1)825/04-05(02)).
 - (b) The Administration has undertaken to move a CSA to recast the drafting of section 2(3) of the proposed 23rd Schedule to reflect the policy intent that the subsection is to cater for a “grandparent-parent-subsidiary” situation (paragraph 11 of LC Paper No. CB(1)825/04-05(02)).
 - (c) According to paragraph 3 of the Administration’s reply dated 27 January 2005 to the Assistant Legal Adviser (LC Paper No. CB(1)825/04-05(03)), it is hypothetically possible under section 2(1) of the proposed 23rd Schedule that more than one undertaking can satisfy the various criteria under which an undertaking is defined to be a parent undertaking in relation to another undertaking (i.e. subsidiary undertaking). The Administration is requested -
 - to clarify the obligation of these parent undertakings under the CO in preparing group accounts; and
 - to consider the need for setting out clearly in the Bill provisions dealing with the occurrence of the above hypothetical possibility, and to provide information on whether similar provisions are contained in relevant legislation of other jurisdictions.
 - (d) To address the points of concern raised by members on section 3(3) of the proposed 23rd Schedule at the third and fourth meetings, the Administration has undertaken to research into the intent and application of paragraph 10 of Schedule 10A of the UK Companies Act 1985 on which section 3(3) is modelled. The Administration is requested to clarify the purpose(s) to be achieved by section 3(3) and to respond to the points of concern set out in item 1(e) of the list of follow-up actions to the third meeting (LC Paper No. CB(1)825/04-05(01)).

2. Proposed “true and fair view override” provisions

To address members’ concern about the difficulty for company directors to apply the proposed “true and fair view override” provisions and that directors who fail to comply with the provisions would be subject to criminal sanction under section 124(3) of the CO, the Administration has undertaken to take the following actions and report the outcome to the Bills Committee:

- (a) To discuss with the Hong Kong Institute of Certified Public Accountants on how the proposed provisions could be improved; and
- (b) To review, in consultation with the Department of Justice, the liability provision (i.e. section 124(3) of the CO) relating to non-compliance with the requirement to give a “true and fair view” of the state of affairs and profit and loss of the company in the accounts or group accounts.