

**Bills Committee on Companies (Amendment) Bill 2004
Sixth meeting on 15 March 2005**

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

1. Determination of parent and subsidiary relationship between entities
To facilitate members' understanding of the provisions in section 3(3) of the proposed Twenty-third Schedule (23rd Schedule) to the Companies Ordinance (CO) and their consideration of the Administration's proposal of removing the subsection, the Administration is requested to take the following actions:
 - (a) To provide copies of the following relevant provisions quoted by the Administration-
 - (i) Paragraph 10 of Schedule 10A to the UK Companies Act 1985 (the UK Act) on which section 3(3) of the proposed 23rd Schedule is modelled;
 - (ii) Sections 146 and 162C of the UK Act; and
 - (iii) Sections 49A and 49B of CO.
 - (b) To provide a paper addressing the following concerns raised by members -
 - (i) The original purpose(s) to be achieved by section 3(3) of the proposed 23rd Schedule;
 - (ii) Whether the word "held" in section 3(3) refers to "directly held" and/or "indirectly held";
 - (iii) Whether section 3(3) is applicable to the following scenarios:
 - A parent undertaking ("A") has two fully-owned subsidiary undertakings ("B" which is a body corporate and "C" which is not a body corporate). Both "B" and "C" hold certain shares and voting rights of "A";
 - A parent undertaking ("A") has two partially-owned subsidiary undertakings ("D" which is a body corporate and "E" which is not a body corporate). Both "D" and "E" hold certain shares and voting rights of "A";
 - (iv) In a situation where a company ("A") invests in a fund, which holds shares in another company ("B"), which in turn holds shares in "A", please explain with the relevant provisions and/or accounting rules:
 - How any parent and subsidiary relationship between the entities is determined;
 - How the group accounts of the entities are prepared;
 - Whether section 3(3) is applicable;

- (v) The justifications for the Administration's current proposal of removing section 3(3); and
- (vi) How a parent company should deal with shares of itself held, not directly by the company, but through a subsidiary company.

2. Proposed "true and fair view override" provisions

To address members' concerns relating to the proposed "true and fair view override" provisions in the Bill, the Administration is requested to take the following actions:

- (a) To explain the purpose(s) of the proposed subsection (4) of section 123;
- (b) To review subsections (1), (2), (3), (4) and (4A) of section 123 to address members' concern that there is overlap between the existing and proposed provisions (e.g. between the existing subsection (1) and the proposed subsection (4), and between the existing subsection (3) and the proposed subsection (4)) and consider how the situation should be rectified (e.g. to delete subsection (3)); and
- (c) To provide copies of section 227A and other relevant provisions in the UK Act on which the "true and fair view override" provisions in the Bill are modelled.

3. Meeting arrangements

To facilitate discussion of the Bills Committee, the Administration is requested to take the following actions:

- (a) To provide the relevant provisions in CO and accounting rules, and relevant legislation and accounting rules of other jurisdictions in footnotes or annexes to papers to be submitted to the Bills Committee in future; and
- (b) To invite Government's legal advisers on company laws to attend meetings of the Bills Committee.