

Bills Committee on Companies (Amendment) Bill 2004
First meeting on 8 November 2004

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

1. Noting that the Administration has made reference to relevant provisions in other jurisdictions in formulating the proposals in the Bill, members invite the Administration to provide a paper covering the following information:
 - (a) Comparison of the proposals in the Bill and the relevant provisions in other jurisdictions, including but not limited to the following aspects-
 - (i) Application of the provisions to parent undertakings which are incorporated or registered or formed locally and those which are not;
 - (ii) Application of the provisions to subsidiary undertakings which are incorporated or registered or formed locally and those which are not; and
 - (iii) Guidelines for company directors to exercise their discretion to apply the “true and fair view override” provisions, and the relevant authority responsible for ensuring compliance.
 - (b) Experience of and problems encountered by other jurisdictions in implementing the relevant provisions.
2. To facilitate members’ understanding of the scope of application of the Bill to different types of companies and their subsidiaries, the Administration is requested to provide a paper on the subject, including the following information:
 - (a) Application of the Bill to parent undertakings which are -
 - (i) incorporated or registered or formed in Hong Kong;
 - (ii) incorporated or registered or formed in the Mainland or other jurisdictions; or
 - (iii) listed in Hong Kong.
 - (b) Application of the Bill to subsidiary undertakings which are incorporated or registered or formed in Hong Kong; and
 - (c) Application of the Bill to subsidiary undertakings which are not incorporated or registered or formed in Hong Kong, in particular those incorporated or registered or formed in the Mainland.

3. To facilitate members' understanding of the proposed "dominant influence" test in determining "parent-subsidiary" relationship, the Administration is requested to provide a paper on the subject, including the following information -
 - (a) Operation of the "dominant influence" test in a situation where more than one parent undertaking exercise dominant influence over a subsidiary undertaking, i.e. "joint control" of a subsidiary;
 - (b) How group accounts in relation to a subsidiary undertaking under "joint control" are prepared;
 - (c) Operation of the "dominant influence" test in a situation where a parent undertaking has a dominant influence in respect of the operating policies of a subsidiary undertaking while another parent undertaking has a dominant influence in respect of the financial policies of the same subsidiary undertaking; and
 - (d) Meaning of "dominant influence". Whether there are any practice directions or court decisions on the application of the "dominant influence test" in determining "parent-subsidiary" relationship.
4. To address members' concern about the impact of the Bill on the financial reporting requirements on companies, the Administration is requested to provide a paper on the subject, including the following information:
 - (a) Comparison of the existing and proposed requirements, with concrete examples to show the impact of the change;
 - (b) Cost implication of the proposed requirements on companies, in particular small companies; and
 - (c) Impact of the proposed requirements on companies which are exempted from consolidation under the existing Companies Ordinance (CO) but will be required to file group accounts after the passage of the Bill.
5. In order to ascertain the need for and the impact of the proposed "true and fair view override" provisions, the Administration is requested to provide a paper on the subject, including the following information:
 - (a) Whether the Financial Secretary (FS) has invoked the powers under sections 123(4) and 126(3) of CO to modify the requirements of CO as to the matters to be stated in a company's accounts or group accounts;

- (b) Existing criteria for FS to exercise the powers under sections 123(4) and 126(3) of CO;
- (c) Impact of the proposed “true and fair view override” provisions on the responsibilities and liabilities of company directors and auditors in preparing company’s accounts or group accounts; and
- (d) Whether guidelines will be issued by the Administration or the Hong Kong Institute of Certified Public Accountants for company directors to apply the “true and fair view override” provisions so as to ensure that they would exercise their discretion in a reasonable manner.

Council Business Division 1
Legislative Council Secretariat
11 November 2004