

For discussion

**Bills Committee on
Financial Reporting Council Bill**

**Follow-up actions arising
from the meeting on 12 May 2006**

PURPOSE

This paper sets out the Administration's responses to the follow-up actions arising from the meeting on 12 May 2006.

PROTECTION OF INFORMERS

2. **Clause 51A** is newly formulated to encode in statute the protection of informers' identity under common law, with reference to section 30A of the Prevention of Bribery Ordinance (Cap. 201) and section 57 of the Dangerous Drugs Ordinance (Cap. 134). Having regard to the common law position and a Member's view, we agree to make slight amendment to the drafting of **clause 51A(2)** to better achieve the objective of this aspect of protection. The revised wording of **clause 51A** is at **Annex**.

LIEN CLAIMED ON RECORDS OR DOCUMENTS

3. A Member has asked whether **clause 57** has the effect of maintaining the lien claimed by a person on a document, which has been produced to the investigator who later delivers the document to the owner of the document by mistake.

4. A lien is a right at common law in a person to retain that which is rightfully and continuously in his possession belonging to another, until the claims of the person in possession have been satisfied.¹

5. According to our legal advice, generally speaking, a lien is lost if possession is lost. However, a lien is not lost by delivery of a chattel to the owner for his temporary use under an agreement that the chattel should be returned after use and that the lien should continue.² Likewise, where a solicitor, who had a lien on his former client's title documents, sent those documents to another solicitor acting for the client, the lien was not lost if the documents were sent on the understanding that the documents would be held to the first solicitor's order or for his account.³

6. Under **clause 57(c)**, even if a person has produced to an investigator a document on which the person claims a lien, the production does not affect the lien. Even though the person parts with possession of the document by producing it to an investigator, he maintains the lien on the document. The lien is maintained irrespective of whether the document is in the possession of the investigator or, if the investigator has delivered the document to its owner by mistake, that owner.

OFFICIAL RECEIVER AS LIQUIDATOR

7. During the discussion of the revised wording of **clause 51**, a Member has requested the Administration to provide information on the number of cases in which the Official Receiver was appointed as a liquidator of a company in the past few years.

¹ Hammonds v Barclay [1802] 2 East 227 at 235

² Albemarle Supply Co. Ltd v Hind & Co [1928] 1 KB 307

³ Caldwell v Sumpters [1972] 1 All ER 567. The English Court of Appeal said a solicitors' lien on documents of title was not lost by the parting with possession of those documents if the circumstances showed that the lien was being expressly or impliedly reserved. The court held that even though the solicitor had sent those title documents to another solicitor, he did so on the express understanding that he did not intend to abandon the lien. If the solicitor retained the lien on the title documents, he would not lose the lien whether it was his former client, or his former client's newly appointed solicitor, holding the title documents.

8. The relevant information provided by the Official Receiver's Office is set out below -

Time period	Number of cases in which the Official Receiver was appointed as a liquidator of a company
April 2003 – March 2004	7
April 2004 – March 2005	4
April 2005 – March 2006	0

**Financial Services and the Treasury Bureau
May 2006**

Financial Reporting Council Bill

51A. Protection of informers

(1) Any information on the identity of a relevant person is not admissible in evidence in -

- (a) any civil or criminal proceedings before a court or magistrate;
- (b) any proceedings before the Market Misconduct Tribunal; or
- (c) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50).

(2) In such proceedings, a witness **shall not** ~~is not~~ ~~obliged~~ -

- (a) ~~to~~ disclose the name or address of a relevant person who is not a witness in those proceedings; or
- (b) ~~to~~ state any matter that would lead, or would tend to lead, to discovery of the name or address of a relevant person who is not a witness in those proceedings.

(3) If a book, document or paper that is in evidence, or liable to inspection, in such proceedings contains an entry

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- (a) in which a relevant person is named or described; or

(b) that might lead to discovery of a relevant person,

the court, the magistrate, the Market Misconduct Tribunal or the Disciplinary Committee constituted under section 33(3) of the Professional Accountants Ordinance (Cap. 50), as the case may be, shall cause all such passages to be concealed from view, or to be obliterated, so far as may be necessary to protect the relevant person from discovery.

(4) In such proceedings, the court, the magistrate, the Market Misconduct Tribunal or the Disciplinary Committee, as the case may be, may, despite subsection (1), (2) or (3), permit inquiry, and require full disclosure, concerning a relevant person if -

(a) it is of the opinion that justice cannot be fully done between the parties to the proceedings without disclosure of the name of the relevant person; or

(b) in the case of a relevant person within the meaning of paragraph (a) of the definition of "relevant person" in subsection (6), it is satisfied that the relevant person made a material statement that he -

(i) knew or believed to be false; or

(ii) did not believe to be true.

(5) This section has effect despite sections 35 and 47.

(6) In this section, "relevant person" (有關人士) means

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- (a) an informer who has given information to the Council, the Investigation Board or a Review Committee with respect to an investigation under Part 3 or an enquiry under Part 4; or
- (b) a person who has assisted the Council, the Investigation Board or a Review Committee with respect to such an investigation or enquiry.