

立法會
Legislative Council

LC Paper No. LS2/04-05

**Paper for the House Committee Meeting
on 15 October 2004**

**Legal Service Division Report on
Companies (Amendment) Bill 2004**

I. SUMMARY

1. **Objects of the Bill** To amend provisions in the Companies Ordinance (Cap. 32) ("the Ordinance") relating to group accounts and introduce the "true and fair override" provisions relating to preparation of company's or group accounts.

2. **Comments**
 - (a) The proposed legislative amendments in the Bill were originally contained in Schedule 2 and Part 2 of Schedule 5 ("the Schedules") of the Companies (Amendment) Bill 2003 ("the 2003 Bill"). The 2003 Bill was passed on 7 July 2004 with the Schedules removed due to insufficient time for scrutiny by the Bills Committee on that bill. The Administration has confirmed that apart from some textual amendments of a minor nature necessitated by the passage of time and the fine-tuning of drafting, the Bill is the same in substance as the Schedules.

 - (b) The Bill proposes to amend provisions of the Ordinance relating to group accounts and introduce the "true and fair override" provisions relating to preparation of company's and group accounts.

3. **Public Consultation** According to the LegCo Brief, the Administration had carried out public consultations on the proposals before introduction of the 2003 Bill.

4. **Consultation with LegCo Panel** The LegCo Panel on Financial Affairs (FA Panel) was briefed on the legislative proposals to be included in the Bill at its meeting on 7 April 2003. At the Panel meeting, members raised concerns on the need of the proposed amendments, the impact on the present tax regime and propriety of the approach of making reference to company laws of different overseas jurisdictions. To facilitate members' scrutiny of the Bill, the Administration was urged to provide comparison between overseas legislation and the present proposals.

5. **Conclusion** In view of members' concerns raised in the FA Panel in the last term and with reference to the previous decision of the House Committee on the 2003 Bill, members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

Objects of the Bill

To amend provisions in the Companies Ordinance (Cap. 32) ("the Ordinance") relating to group accounts and introduce the "true and fair override" provisions relating to preparation of company's or group accounts.

LegCo Brief Reference

2. Members may refer to the LegCo Brief issued by the Financial Services and the Treasury Bureau on 6 October 2004 (File Ref.: C2/1/57/2 (04) Pt. 5) for background information.

Date of First Reading

3. 13 October 2004.

Background

4. The proposed legislative amendments in the Bill were originally contained in Schedule 2 and Part 2 of Schedule 5 ("the Schedules") of the Companies (Amendment) Bill 2003 ("the 2003 Bill"), which was introduced in the Legislative Council on 13 June 2003. Pursuant to a decision of the House Committee made at its meeting held on 27 June 2003, a Bills Committee was formed to study the 2003 Bill. However, it did not have sufficient time to scrutinize the whole of the 2003 Bill before the end of the second term of the Legislative Council. The 2003 Bill was passed on 7 July 2004 with the Schedules removed.

5. The Administration has confirmed in paragraph 4 of the LegCo Brief that apart from some textual amendments of a minor nature necessitated by the passage of time and the fine-tuning of drafting, the Bill is the same in substance as the Schedules. A marked-up copy of the Bill showing the amendments is at Annex B of the LegCo Brief.

Comments

6. (a) The Bill proposes to amend provisions of the Ordinance relating to group accounts by:

- (i) defining "parent company", "subsidiary undertaking" and "parent undertaking". The "right to exercise a dominant influence over another undertaking" i.e. a right to give directions with respect to the operating and financial policies of that other undertaking is introduced as a test of the parent/subsidiary undertaking relationship;
 - (ii) defining "undertaking" to include body corporates or corporations, partnerships and other unincorporated bodies; and
 - (iii) providing for the contents of group accounts and the circumstances in which a subsidiary may be excluded from the group accounts.
- (b) The Bill proposes to introduce the "true and fair override" provisions to enable the directors to depart from requirements under the Ordinance if compliance of which does not give a true and fair view of the state of affairs of the company or the group.

7. The Bill shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Public consultation

8. According to the LegCo Brief, the Bill has been prepared with reference to the relevant statutory provisions of the United Kingdom and in consultation with the Hong Kong Institute of Certified Public Accountants. The Administration invited comments from various bodies in April 2003. The Hong Kong General Chamber of Commerce had no objection to the proposals. The Chinese General Chamber of Commerce supported the proposals. Both the Hong Kong Mortgage Corporation Limited and Hong Kong Capital Markets Association were concerned about the possible impact of the proposals on the asset securitisation market in Hong Kong, in particular, whether Hong Kong would be competitively disadvantaged when compared with other financial centres. The Administration indicated that it would keep a close watch on international developments and refine the Bill when necessary before its enactment to ensure that market development and corporate governance needs in Hong Kong were adequately catered for and that the disclosure regime was in line with international standards and practices.

Consultation with LegCo Panel

9. At the meeting of the LegCo Panel on Financial Affairs (FA Panel) on 7 April 2003, the Administration briefed members on the 2003 Bill, including the proposed definition of “subsidiary” for the purposes of group accounts. Members may wish to refer to the minutes of the FA Panel meeting on 7 April 2003 (LC Paper No. CB(1)2046/02-03) for details.
10. At the Panel meeting, members raised the following:
- (a) the need to amend the definition of “subsidiary” and whether accounting rules and regulations would be changed accordingly to allow for the calculation of tax on a group account basis so that losses incurred by subsidiaries would offset profits of the parent company.
 - (b) the propriety of the approach of making reference to company laws of different overseas jurisdictions; and
 - (c) to facilitate members' scrutiny of the Bill, members urged the Administration to provide comparison between the legislation of overseas jurisdictions and the present proposals when introducing the Bill into the Council.
11. The Administration's reply was as follow:
- (a) the Administration explained that the definition of “subsidiary” under section 2(4) of the Ordinance was narrower than those adopted in the International Accounting Standards (IAS) and the then Hong Kong Statements of Standard Accounting Practice (SSAP). The Administration considered it necessary to amend the statutory definition to more closely align with them.
 - (b) the Administration confirmed that the proposed changes would not affect the present tax regime; and
 - (c) the Administration advised that its policy was to adopt the best practices of different overseas jurisdictions. In working out the current proposals, reference had been made to relevant legislation of oversea jurisdictions with well-developed regimes which were similar to those in Hong Kong.

Conclusion

12. In the light that some members of the FA Panel in the last legislative session had expressed concern over certain aspects of the Bill and with reference to the previous decision of House Committee made on the 2003 Bill, members may wish to form a Bills Committee to study the Bill in detail.

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