

**Bills Committee on Companies Bill**

**Follow-up actions to be taken by the Administration  
for the meeting on 6 May 2011**

Part 12

*The duty of a company to send a copy of passed written resolution to all members and the auditor within 15 days (Clause 549)*

1. Members noted that there was concern from a respondent during the consultation of the legislative proposal that the requirement would create unnecessary administrative burden for both the company and auditor. Noting that a similar requirement already exists in section 116BA of the Companies Ordinance ("CO") which was introduced in around 2000, the Administration is requested to provide information on the background and considerations of the then legislative amendments.

*A proxy may be elected as the chairperson of the general meeting (Clause 592)*

2. In relation to the proposal to expressly provide that a proxy may be elected as the chairperson of the general meeting (subject to any provisions of the company's articles), members expressed concern about the legal liability for the proxy's failure to properly perform the role and legal functions of the chairman at a general meeting. The Administration is requested to:
  - (a) provide information and explanation on the parties responsible for legal liability in this regard;
  - (b) consider specifying in the Bill the legal liability of responsible parties in (a) above; and
  - (c) provide information on legal requirements and practices in the United Kingdom, Australia and Singapore relating to proxies who are elected as chairpersons of companies' general meetings, including the legal liability of concerned parties in the event of failure of the proxies in discharging the duties of the chairpersons.

## Part 9

### *Relaxing the criteria for small companies to prepare simplified financial and directors' reports (Clauses 358 to 362 and Schedule 3)*

3. There are proposals in the Bill to relax the criteria for small companies to prepare simplified financial and directors' reports. Three categories of companies (set out in paragraph 7 of the Administration's paper (LC Paper No. CB(1)1879/10-11(04)) will be qualified for using such accounts which will be prepared based on the Small and Medium-sized Entity Financial Reporting Standard ("SME-FRS") promulgated by the Hong Kong Institute of Certified Public Accountants ("HKICPA"). To enable members to have a better understanding of the rationale of the proposed exemption and to address their concerns, the Administration is requested to:
  - (a) provide information on the percentage of the companies in respect of each category of the exempted companies among all companies in Hong Kong;
  - (b) provide a sample of an auditor's report for the financial statement of a small/medium-sized company showing the application of SME-FRS in preparing the company accounts;
  - (c) provide a hyperlink for accessing the "Small and Medium-sized Entity- Financial Report Framework" issued by HKICPA;
  - (d) explain how the proposal to relax the exemption criteria would protect the interest of small shareholders while striking a balance in facilitating the business and reducing the compliance cost of small companies;
  - (e) consider further relaxation in the exemption criteria, e.g. allowing private companies/groups of any size to use simplified financial and directors' reports with the agreement of a certain percentage of members of the company;
  - (f) re-consider the exemption criteria for qualified companies in using simplified financial and directors' reports if a certain percentage of members of the company objects to the proposal as a measure to protect the interest of small shareholders; and

- (g) provide information on measures/proposals in relation to rights of small shareholders in access to accounting records of a company under the Bill for protecting their interests.
4. As regards the views collected from public consultation on the scope of companies qualified for using simplified financial and directors' reports, members noted that paragraphs 11 and 12 of the Administration's paper (LC Paper No. CB(1)1879/10-11(04)) mainly reported the views of HKICPA. The Administration is requested to provide information on other views expressed on the subject during the consultation and the relevant response from the Administration.

*Empowering auditors to obtain information from a wider range of persons for the performance of their duties (Clause 403)*

5. Members noted that, under Clause 403, auditors of companies will be empowered to require information and explanations that they reasonably require for the performance of their duties as auditors from a wider range of persons (including a person holding or accountable for any accounting records of the company); and failure to comply with the requirement to provide information, etc. to auditors will be subject to criminal sanctions under Clause 404. While the Administration advised that similar sanctions are imposed under section 133 of the existing CO, members were concerned that imposing criminal sanctions on failure to provide information to auditors would be harsh. In particular, there was concern about difficulties for persons in subsidiary undertakings that were not incorporated in Hong Kong in complying with the requirement since these persons may be prohibited by legislation in their respective jurisdictions from disclosing information relating to the companies' accounts. In such cases, there was concern about how the Administration could enforce the requirement on these persons as they may not be subject to requirements under Hong Kong legislation. In addition, Clause 403(6) states that a company must take all reasonable steps to obtain the information or explanation as soon as practicable after being required by an auditor, and Clause 404(5) imposes criminal sanctions on the company and any of its responsible persons if the company contravenes section 403(6). In this regard, members raised concern about the fairness to impose criminal sanctions on the Hong Kong company and its responsible persons for acts of non-compliance by non-Hong Kong subsidiaries. To address the above concerns, the Administration is requested to:

- (a) provide information on past cases/examples under which a person has failed to comply with the said requirement under the existing CO, including cases involving persons in subsidiary undertakings that were not incorporated in Hong Kong; and
- (b) consider providing in the Bill the circumstances under which persons may have defence for non-compliance with the said requirement.

Council Business Division 1  
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