

Bills Committee on Companies Bill

Follow-up actions to be taken by the Administration for the meeting on 13 May 2011

Part 1

The formulation of "responsible person" (Clause 3)

1. Members remain concerned about the use of the formulation of "responsible person" in the Bill, under which "responsible person" in a company will be liable for criminal offences if he "fails to take all reasonable steps to prevent the contravention or failure" of breaches to requirements. Responsible persons will be easily caught by the phrase and liable for offences in the Bill. Members have questioned the need to adopt the formulation given that offences in the Bill are mostly regulatory in nature (e.g. failure to file various returns and documents on time to the Registrar of Companies ("the Registrar")) and that the current non-compliance situation by companies is not serious. There is also concern about the formulation imposing an onerous burden on the small and medium-sized enterprises (SMEs), where resources and legal knowledge are usually limited and hence operators may easily overlook the numerous filing requirements. Application of the formulation to SMEs will run contrary to the objective of the Bill to facilitate SMEs' operation and reduce their compliance costs.
2. To enable members to have a better understanding on the compliance situation of companies on the filing requirements under the existing Companies Ordinance, the Administration is requested to provide information on:
 - (a) the number of cases in recent years where companies have failed to file annual returns or to notify the Registrar about changes to the registered office; and
 - (b) the penalties imposed on the non-compliance cases.

The impact on SMEs

3. Some members have suggested addressing the above concern on SMEs by providing them with an opportunity to make remedial action before taking prosecution. The Administration has explained that there are provisions in Part 20 of the Bill for the Registrar to compound specified offences. Under the proposal, the Registrar may offer a person in default an opportunity to rectify the default by paying a compounding fee and by rectifying the breach constituting the offence. The list of compounding offences is provided in Schedule 7 to the Bill. The Administration is requested to:
 - (a) provide information explaining the criteria for determining the compounding offences to be included in Schedule 7; and
 - (b) consider providing in the Bill a mechanism, including the principles/factors the Registrar has to take into account, in using the power to compound an offence.

Consultation with SMEs

4. As a number of the proposals in the Bill will affect SMEs and their operation, members stress the importance to consult SMEs on the changes and address their concerns. They are concerned that during previous consultations with the stakeholders, the Administration may not have reached the right targets or made thorough explanation on the possible changes and impacts. The Administration is requested to provide information on past consultations conducted with organizations, in particular, SME bodies and their representatives.