

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1731/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/5/12/1

**Subcommittee on Subsidiary Legislation Made under  
the New Companies Ordinance**

**Minutes of the fifth meeting on  
Tuesday, 9 April 2013, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon Kenneth LEUNG (Deputy Chairman)  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, JP  
Hon Martin LIAO Cheung-kong, JP  
Dr Hon CHIANG Lai-wan, JP  
Hon CHUNG Kwok-pan

**Members absent** : Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon Starry LEE Wai-king, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Steven HO Chun-yin

**Public officers Attending** : Financial Services and the Treasury Bureau

Mr Arsene YIU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 6

Companies Registry

Mrs Karen HO  
Deputy Principal Solicitor (Company Law Reform)

Ms Phyllis MCKENNA  
Deputy Principal Solicitor (Company Law Reform)

Mrs Christine Frances SIT  
Senior Solicitor (Company Law Reform)

Mr CHUNG Wai-tim  
Acting Senior Solicitor (Company Law Reform)

Department of Justice

Ms Phyllis KO  
Senior Assistant Law Draftsman

Ms Amy CHAN  
Senior Government Counsel

Ms Carmen CHAN  
Government Counsel

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Mr Timothy TSO  
Assistant Legal Adviser 2

Ms Angel SHEK  
Senior Council Secretary (1)4

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## **I Meeting with the Administration**

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|---------------------------------|--|
| (L.N. 34 of 2013                | — Companies (Revision of Financial Statements and Reports) Regulation  |
| L.N. 35 of 2013                 | — Companies (Disclosure of Information about Benefits of Directors) Regulation   |
| File Ref: CBT/7/6C              | — Legislative Council Brief  |
| LC Paper No. CB(1)802/12-13(01) | — Updated background brief on the Subsidiary Legislation Made under the New Companies Ordinance prepared by the Legislative Council Secretariat) |

### Discussion

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

### Follow-up action to be taken by the Administration

2. The Administration was requested to consider members' suggestion for the Companies Registry to issue guidelines/practice notes to facilitate the understanding of the accounting profession on the operation of section 408 of the new Companies Ordinance ("CO") and section 16 of the Companies (Revision of Financial Statements and Reports) Regulation ("Regulation") regarding the liability of auditor in relation to contents of auditor's report for a company's financial statements and the revised financial statements, including the scope of the reference to "employee and agent of the person who is eligible for appointment as auditor of the company" in section 408(2) of the new CO and section 16(2) of the Regulation.

## **II Any other business**

### Invitation of public views

3. Members agreed that it was unnecessary for the Subcommittee to invite views from the public or relevant parties on the second batch of two pieces of subsidiary legislation made under the new CO.

Legislative timetable

4. The Chairman informed members that, as agreed by the Subcommittee earlier, the scrutiny period for the two pieces of subsidiary legislation would be extended by resolution of the Council to 15 May 2013. Members were invited to note that the date of reporting of the Subcommittee's deliberations to the House Committee would be 3 May 2013 and the deadline for giving notice of amendments, if any, would be 8 May 2013.

*(Post-meeting note: As the Council was unable to deal with the extension motion at the Council meetings of 17 April 2013 and 24 April 2013, the scrutiny period of the two pieces of subsidiary legislation concerned had expired at the Council meeting of 24 April 2013.)*

Date of next meetings

5. Members agreed that the next two meetings would be held on 16 April 2013, at 4:30 pm; and 22 April 2013, at 8:30 am.

6. There being no other business, the meeting ended at 10:33 am.

Council Business Division 1  
Legislative Council Secretariat  
23 August 2013

**Proceedings of the Subcommittee on Subsidiary Legislation Made under  
the New Companies Ordinance  
Fifth meeting on Tuesday, 9 April 2013, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000158 – 000423	Chairman	Opening remark	
000424 – 000837	Administration Chairman	<p>Briefing by the Administration on the Companies (Revision of Financial Statements and Reports) Regulation (L.N.34 of 2013) made under the new Companies Ordinance ("new CO").</p> <p>(The Legislative Council Brief (File Ref: CBT/7/6C))</p>	
000838 – 002458	Deputy Chairman Mr Martin LIAO Administration ALA2 Chairman	<p>The Deputy Chairman and Mr LIAO's enquiries/views about –</p> <p>(a) the rationale for including provisions on auditor's liability for the auditor's report on revised financial statements of a company in the Companies (Revision of Financial Statements and Reports) Regulation ("L.N. 34") where provisions on the offences relating to contents of auditor's report were already included in the new CO; and</p> <p>(b) whether the offences for auditors relating to auditor's report on the company's revised financial statements were the same as those for the company's original financial statements.</p> <p>The Administration advised that –</p> <p>(a) section 450 of the new CO provided for the power of the Financial Secretary ("FS") to make subsidiary legislation to prescribe the detailed requirements concerning the revised financial statements, the summary financial report and the directors' report ("the relevant documents") which was subject to the negative vetting procedure of the Legislative Council ("LegCo"). Section 450(3) and (4) expressly stated that the regulation made under section 450, i.e. L.N.34, might provide for offence and penalty;</p>	

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		<p>(b) the new CO had adopted the same approach as the existing CO of prescribing administrative and technical requirements etc. in subsidiary legislation. The new CO was passed by LegCo in 2012;</p> <p>(c) L.N. 34 basically re-enacted the subsidiary legislation under the existing CO, i.e. the Companies (Revision of Accounts and Reports) Regulation (Cap.32 sub. leg. N); and</p> <p>(d) L.N. 34 followed the general principle that the obligations and arrangements concerning the original relevant documents also applied to the revised relevant documents, only with some necessary modifications according to the manner in which the documents were revised, i.e. revision by replacement or supplementary note. As such, an auditor's report must be prepared on the revised financial statements. Section 407 of the new CO required, <i>inter alia</i>, auditors to state (i) his opinion if the financial statements were not in agreement with the accounting records in any material respect; and (ii) the fact that he failed to obtain the necessary and material information or explanations for the purpose of the audit. Section 408 of the new CO provided for the auditor's liability in relation to section 407. Section 15 of L.N.34 provided for the applicability of section 407 of the new CO and section 16 of L.N.34 mirrored section 408 of the new CO.</p> <p>The Deputy Chairman's enquiries on whether an auditor would be liable for offences concerning omission of the two statements in an auditor's report under section 408 of the new CO and/or section 16 of L. N.34 if he identified the omission in the auditor's report on the company's original financial statements and took remedial action by requesting the company's directors to revise the financial statements and providing a revised auditor's report on the revised financial statements.</p> <p>The Administration responded that –</p> <p>(a) it was the responsibility of a company's directors to prepare financial statements, and</p>	

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		<p>the company's auditor to prepare the auditor's report on the statements and state in the report his opinion whether the financial statements had been properly prepared. If the directors of a company, for some reasons, caused any financial statements to be revised, the revised financial statements were subject to audit and another auditor's report on the revised financial statements would be required for this purpose. In this case, the two reports were regarded as two individual reports pertaining to different sets of financial statements prepared by the company, and the auditor's liability should be considered separately for each auditor's report; and</p> <p>(b) an auditor would be liable only if he committed the offences knowingly or recklessly. The liability did not cover negligence on the part of the auditor. The prosecution would take into account all relevant circumstances of a case in considering the offences.</p> <p>ALA2 pointed out that section 449 of the new CO provided that revisions made to the original financial statements were to be confined to aspects of the statements that did not comply with the ordinance and other necessary consequential revisions. The Administration was invited to clarify whether omission of the two statements from the auditor's report alone could be a justification for the company to revise its financial statements.</p> <p>The Administration advised that the auditor's report did not form part of the financial statements; and if the omission in the auditor's report did not meet the conditions set out in section 449 of the new CO for voluntary revision of financial statements, e.g. the omission was not related to aspects of the financial statements that did not comply with the new CO, or other necessary consequential revisions, the arrangements concerning the revision to financial statements under section 449 would not be applicable.</p>	

Time Marker	Speaker	Subject(s)	Action Required
002459 – 003218	Administration Chairman	<p>Briefing by the Administration on the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N.35 of 2013).</p> <p>(The Legislative Council Brief (File Ref: CBT/7/6C))</p>	
003219 – 003535	Deputy Chairman Administration Chairman	<p>The Deputy Chairman enquired –</p> <p>(a) whether the definitions of director and shadow director in the Companies (Disclosure of Information about Benefits of Directors) Regulation ("L.N. 35") were aligned with those in the new CO, and whether there were recent changes in the definition of shadow director; and</p> <p>(b) whether the threshold for disclosure on benefits provided to directors would be higher than that for shadow directors.</p> <p>The Chairman enquired whether the same disclosure requirements applied to directors and shadow directors in respect of the same type of benefit.</p> <p>The Administration advised that –</p> <p>(a) shadow director was defined in section 2 of the new CO and the definition followed that provided in the existing CO; and</p> <p>(b) the requirement for a company to disclose, in the notes to financial statements, the benefits provided to its directors and shadow directors were provided in the new CO but details of the disclosure requirements were set out in L.N.35. The information to be disclosed was different according to the types of benefits concerned, and not all disclosure requirements for directors were applicable to shadow directors. However, where the same disclosure requirement applied to both directors and shadow directors, the relevant information/particulars required to be disclosed would be the same for both directors and shadow directors.</p>	



Time Marker	Speaker	Subject(s)	Action Required
003536 – 003842	Mr Jeffrey LAM Administration Chairman	<p>Mr LAM enquired whether the same disclosure requirements were applicable to directors and their connected entities, and the differences, if any, between the relevant requirements under the existing CO and the new CO.</p> <p>The Administration advised that under L.N. 35, the scope of disclosure requirements in respect of the connected entities of a director was aligned with the provisions under Divisions 1 and 2 of Part 11 of the new CO. The major differences between the new requirements and those under the existing CO were –</p> <ul style="list-style-type: none"> <li>(a) the scope of connected entities was expanded to include, for example, persons who were in a co-habitation relationship with the director (including minor child of these persons);</li> <li>(b) under the existing CO, the disclosure requirements on loans etc. in favour of directors were extended to their connected entities only in the case of listed companies. In line with the changes in Part 11 of the new CO, the scope of application of such requirements would be widened to cover all public companies and their subsidiaries.</li> </ul>	
003843 – 004847	Mr CHUNG Kwok-pan Mr Andrew LEUNG Administration Chairman	<p>In reply to Mr CHUNG and Mr LEUNG about the new requirement for relevant companies to prepare a business review, the Administration explained that –</p> <ul style="list-style-type: none"> <li>(a) under the new CO, there was a new requirement for certain companies to prepare, as part of the directors' report, a business review which was more analytical and forward-looking;</li> <li>(b) Schedule 3 to the new CO set out the qualifying conditions for companies eligible for simplified reporting, including conditions on a company's total revenue, total assets and average number of employees in a financial year. Companies qualified for simplified reporting would be exempted from the requirement to prepare a business review;</li> </ul>	

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		<p>(c) the detailed requirements of a business review were set out in Schedule 5 to the new CO. For instance, a business review must consist of particulars of important events affecting the company that had occurred since the end of the financial year. To the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include: a discussion on the company's environmental policies and performance, and the company's compliance with the relevant laws and regulations that had a significant impact on the company; and an account of the company's key relationships with its employees, customers and suppliers and others that had a significant impact on the company; and</p> <p>(d) there were provisions in the new CO such that company directors would be liable only if they wilfully omitted certain important information from the business review.</p>	
004848 – 005134	Chairman Mr SIN Chung-kai Administration	<p>Discussion on invitation of public views.</p> <p>The Administration advised that public consultation was conducted on the two pieces of subsidiary legislation in November 2012 and respondents were generally supportive of the legislation. Comments received were mainly on the technical and drafting aspects, which had been incorporated in finalizing the subsidiary legislation where appropriate.</p> <p>Members agreed that it was unnecessary for the Subcommittee to invite views from the public or deputations on the subsidiary legislation.</p>	
005135 – 005301	Chairman	Legislative timetable	
<b>Clause-by-clause examination of the subsidiary legislation</b>			
005302 – 005715	Mr Dennis KWOK Administration Chairman	<p><b><u>Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34 of 2013)</u></b></p> <p><b>Part 1 – Preliminary</b></p>	

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		<p><u>Section 1 – Commencement</u></p> <p>Members raised no questions.</p> <p><u>Section 2 – Interpretation</u></p> <p>In reply to Mr KWOK, the Administration advised that L.N. 34 did not specify requirements on the layout of the replacement or supplementary note for making a revision to the financial statements of a company.</p>	
005716 – 010545	ALA2 Administration Chairman	<p><b>Part 2 – Contents of Revised Documents</b></p> <p><u>Section 3 – Requirements regarding contents of revised financial statements</u></p> <p>ALA 2 noted that section 3(4)(c)(ii) provided that if the directors of a company caused any financial statements to be revised by replacement, the directors must state in a prominent position in the revised financial statements the material revisions to the original financial statements. ALA2 sought clarification on –</p> <p>(a) the meaning of "material revision" in the context of a revision to the original financial statements; and</p> <p>(b) if a company had made several revisions to the original financial statements and only some of them were considered as material revisions, whether the statement to be included in the revised financial statements should include only the material revisions.</p> <p>The Chairman enquired which party would be responsible for deciding whether a revision to the original financial statements was material or otherwise.</p> <p>The Administration advised that –</p> <p>(a) "material" should be given its ordinary meaning. Whether a revision was material should be decided by the directors of a company with regard to the circumstances and the nature of the revision;</p>	

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		<p>(b) if the directors considered that there were material revisions to the original financial statements, they were required to make a statement in the revised financial statements about the material revisions. Nevertheless, there was no provisions to prevent a company from including in the statements revisions which were not considered material;</p> <p>(c) upon receiving complaints, the Companies Registry ("CR") would take enforcement action on non-compliance with the requirements for revision of the relevant documents, including making investigation and taking out prosecution as appropriate. If the matter was brought to the court, it would be a matter for the court to decide whether the revision in question was material; and</p> <p>(d) a company's directors would be liable only if they failed to take all reasonable steps to secure compliance with the requirements on revision of the company's financial statements.</p>	
010546 – 010918	Administration Mr SIN Chung-kai Chairman	<p><u>Section 4 – Offences relating to section 3</u></p> <p>In reply to the enquiry of Mr SIN, the Administration explained that, as the fine of \$300,000 for the offences relating to requirements regarding contents of revised financial statements had exceeded the Level 6 fine of \$100,000, the amount of fine, instead of the penalty level, was provided in section 4(2).</p>	
010919 – 011116	Mr Dennis KWOK Administration Chairman	<p>Referring to section 4(1), Mr KWOK enquired about the requirements on a company for laying and publication of its revised financial statements, including the meaning of "circulated" the documents under section 4(1)(c).</p> <p>The Administration advised that the arrangements for laying and publication of the revised financial statements followed those concerning the original financial statements as stipulated in the new CO. For instance, a company should provide the relevant documents to its members by –</p>	

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		<p>(a) laying them before the company in annual general meeting;</p> <p>(b) sending a copy of the documents to each member before its general meeting; or</p> <p>(c) if there was no general meeting, circulating, publishing or issuing the documents by means of sending hardcopy/electronic copy to members or uploading the documents to the company's website.</p>	
011117 – 011311	Administration Chairman	<p><u>Section 5 – Matters to be included in revised directors' report</u></p> <p>Members raised no questions.</p>	
011312 – 011640	Mr SIN Chung-kai Administration Chairman	<p><u>Section 6 – Matters to be included in revised summary financial report</u></p> <p>Referring to section 6(6) and (7), Mr SIN noted that the penalty for a director of a company who failed to take all reasonable steps to secure compliance with the requirements for circulation, publication or issuance of revised summary financial report of a company was \$300,000 whereas if a director of a company <u>wilfully</u> failed to do so, the penalty was \$300,000 and imprisonment for 12 months. He enquired about –</p> <p>(a) the rationale for imposing different penalties for two similar offences; and</p> <p>(b) whether CR would initiate prosecution on both offences.</p> <p>The Administration advised that –</p> <p>(a) the offences and penalties in question were aligned with those in the new CO in respect of the original summary financial report; and</p> <p>(b) given a higher evidential burden for proving "wilfulness" in establishing the failure of a director in taking all reasonable steps to secure the relevant compliance, it was likely that there would be less prosecutions under section 6(7).</p>	

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011641 – 012708	Administration Chairman	<p><b>Part 3 – Approval and Signature of Revised Documents</b></p> <p><u>Section 7 – Approval and signature of revised statement of financial position</u></p> <p><u>Section 8 – Approval and signature of revised directors' report</u></p> <p><u>Section 9 – Approval and signature of revised summary financial report</u></p> <p><b>Part 4 – Effect of Revised Documents</b></p> <p><u>Section 10 – Effect of revised financial statements</u></p> <p><u>Section 11 – Effect of revised directors' report</u></p> <p><u>Section 12 – Effect of revised summary financial report</u></p> <p><b>Part 5 – Auditor's Report on Revised Financial Statements</b></p> <p><u>Section 13 – Auditor's report on revised financial statements</u></p> <p><u>Section 14 – Opinion on revised financial statements</u></p> <p><u>Section 15 – Opinion on other matters</u></p> <p>Members raised no questions on sections 7 to 15.</p>	
012709 – 012944	Mr SIN Chung-kai Administration Chairman	<p><u>Section 16 – Offences relating to contents of auditor's report on revised financial statements</u></p> <p>Mr SIN noted that under section 16(3), if a person knowingly or recklessly caused to be omitted from an auditor's report on revised financial statements a statement required under section 15 to be contained in the report, the person would be liable to a fine of \$150,000, and there was no imprisonment for the offence, but the penalty for some other offences in L.N. 34 included imprisonment. In view of the serious nature of the offence under section 16, Mr SIN enquired about the reasons for not including imprisonment in the sanction.</p>	

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		<p>The Administration advised that offences relating to contents of auditor's report were new provisions not provided in the existing CO. Issues relating to the need for imposing liability on auditors regarding omission of the two statements from an auditor's report and the offences and penalties under clauses 398 and 399 of the Companies Bill ("CB") respectively had been discussed by the relevant Bills Committee ("Bills Committee"), and the relevant provisions had been incorporated as sections 407 and 408 of the new CO. Section 15 of L.N. 34 applied the requirement under section 407 of the new CO to the auditor's report on revised financial statements, whereas section 16 of L.N. 34 mirrored section 408 of the new CO to impose criminal liability on the person who prepared the auditor's report on revised financial statements.</p>	
<p>012945 – 014206</p>	<p>Deputy Chairman Administration ALA2 Chairman</p>	<p>The Deputy Chairman enquired about the scope of the reference to "employee and agent of the person who is eligible for appointment as auditor of the company" in section 16(2)(a)(ii) of the Regulation. He relayed the concerns of the accounting industry that the scope was unclear, in particular, whether an employee/agent who did not possess a practising certificate (which was usually the case with the junior staff of an accounting firm) but was found knowingly or recklessly causing omission of the two statements from an auditor's report, would be liable for the offence in question. In particular, it was uncertain whether the liability would apply to an employee/agent who was qualified for obtaining a practising certificate but did not choose to obtain one.</p> <p>The Administration advised that –</p> <ul style="list-style-type: none"> <li>(a) section 393 of the new CO provided that only a practice unit would be eligible for appointment as auditor of a company. A person holding a practising certificate would be eligible for appointment;</li> <li>(b) under section 16(2) of L.N. 34, if the person who prepared an auditor's report on revised financial statements was a natural person, the person, every employee and agent of the</li> </ul>	

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		<p>person who was eligible for appointment as auditor of the company, and who knowingly or recklessly caused to be omitted from an auditor's report on revised financial statements a statement required to be contained in the report would commit an offence. If the employee/agent in question was not eligible for appointment as auditor of the company because he did not hold a practising certificate, he would not be liable for the offence.</p> <p>ALA 2 pointed out that, when the issue of auditor's liability relating to contents of auditor's report (i.e. clause 399 of CB and section 408 of the new CO) was discussed by the Bills Committee, deputations including those from the accounting profession had expressed concerns. Taking on board the views and concerns of the Bills Committee and deputations about the wide scope of the offence provision, the Administration had proposed Committee Stage amendments ("CSAs") to clause 399 of CB. After the Bills Committee had completed the scrutiny of CB, the Administration informed members that the original clause 399 of CB did not fully reflect the legislative intent and might give rise to implementation problem (LC Paper No. CB(1)2287/11-12(02)). It was the Administration's view that its proposed CSAs in relation to clause 399 would address the implementation problem. However, the Administration's proposed CSAs were not passed by LegCo and the original clause 399 was incorporated in the new CO as section 408. As section 16 of the Regulation mirrored the provisions in section 408 of the new CO, the same implementation problem might occur. He sought information from the Administration on the latest arrangements for tackling the implementation problem, in particular whether the Administration would amend section 408 of the new CO and section 16 of L.N.34 before they came into operation.</p> <p>The Chairman enquired about the Administration's plan, if any, for improving section 408 of the new CO.</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that it was aware of concerns expressed by some members of the accounting industry about section 408 of the new CO, and had been maintaining close communication with them. The Administration would continue with the efforts in this regard before and after implementation of the new CO. Section 408 would commence as part of the new CO in the first quarter of 2014. The Administration would explore with the industry as to whether and how the wording of the provision could be improved in the future in light of market feedback and practical operating experience.</p> <p>The Deputy Chairman considered that the Administration should take early action to address concerns of the accounting industry about section 408 of the new CO before commencement of the ordinance. He requested the Administration to issue guidelines/practice notes to facilitate the understanding of the accounting profession on the operation of the legislation regarding liability of auditor in relation to contents of auditor's report for a company's financial statements and the revised financial statements, including the scope of the reference "employee and agent of the auditor/person who is eligible for appointment as auditor of the company" in section 408(2) of the new CO and section 16(2) of L.N. 34.</p> <p>The Administration undertook to consider the suggestion.</p>	<p>The Administration to take action as required in paragraph 2 of the minutes.</p>
014207 – 014255	Administration Chairman	<p><u>Section 17 – Auditor's reports on revised financial statements to be signed</u></p> <p>Members raised no questions.</p>	
014256 – 014543	Mr Dennis KWOK Administration Chairman	<p><u>Section 18 – Qualified privileges of person preparing auditor's report on revised financial statements etc.</u></p> <p>In reply to Mr KWOK, the Administration advised that the references to "privilege" and "immunity" in section 18(3) of L.N. 34 covered privileges and immunities provided for under the common law, including professional privilege and public interest immunity.</p>	

Time Marker	Speaker	Subject(s)	Action Required
014544 – 014715	Administration Chairman	<p><u>Section 19 – Rights of person preparing auditor's report on revised financial statements</u></p> <p>Members raised no questions.</p>	
014716 – 015403	Dr CHIANG Lai-wan Administration Chairman	<p><u>Section 20 – Offences relating to section 19</u></p> <p>Dr CHIANG sought clarification on the meaning of "material particular" ("要項") in section 20(3)(b) of L.N. 34 as the scope appeared to be vague and wide.</p> <p>The Administration advised that it would be a matter for the court to decide what constituted "material particular" taking into account the relevant facts of a case, such as the possible impact of the misleading, false or deceptive statement in question.</p>	
015404 – 020122	Mr SIN Chung-kai Administration Chairman ALA2	<p>Mr SIN observed that it seemed to be a general rule to impose sanctions of a fine of \$300,000 and imprisonment for 12 months, or a fine of \$150,000 and imprisonment for six months for offences under L.N. 34. However, for the penalty provided in section 20(4) (i.e. provision of misleading or false statements to a person for preparation of the auditor's report on revised financial statements), the penalty on conviction on indictment would be a fine of only \$150,000 and imprisonment for two years. He queried the inconsistency in the penalty level and reasons for the lower fine for the offence under section 20(3).</p> <p>The Administration advised that –</p> <p>(a) the offences and penalty in respect of revised financial statements were aligned with those in respect of the original financial statements under the new CO, which imposed the same level of penalty as in the existing CO. As the relevant provisions in the existing CO were enacted a long time ago, the considerations for determining the penalty level for offences relating to the original financial statements might not be traceable; and</p> <p>(b) as the new CO had already been enacted, the Administration would keep in view the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>implementation of the offence provisions and address concerns and suggestions about the penalty level in the context of future reviews.</p> <p>Mr SIN sought advice from the Legal Adviser of the Subcommittee about the feasibility of providing a higher fine (e.g. \$300,000) for the offence under section 20(3) of L.N. 34 even if a lower fine of \$150,000 was provided for the similar offence under the relevant provision in the new CO.</p> <p>ALA2 advised that the issue concerned policy matters. While the two offences in question covered different matters, given their similar nature, it was the Administration's stance that the penalties for the relevant offences in L.N. 34 should be aligned with that provided for in the new CO.</p> <p>The Chairman said that it was not within the purview of the Subcommittee to propose any amendments to the new CO. Members might pursue policy matters relating to the new CO at meetings of the Panel on Financial Affairs.</p> <p>The Administration responded that members' views on the penalties for offences would be taken into account when conducting reviews of the new CO in future.</p>	
020123 – 020424	Chairman Mr James TIEN Clerk	Date of next meeting	