

立法會
Legislative Council

LC Paper No. CB(1) 767/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

Minutes of tenth meeting
held on Thursday, 9 January 2003, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon CHAN Kwok-keung
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS, JP
- Member absent** : Hon SIN Chung-kai
- Attendance by invitation** : Financial Services and the Treasury Bureau
Mr Esmond LEE
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)⁴
Mr Arthur AU
Assistant Secretary for Financial Services and the
Treasury (Financial Services) (4)¹

Companies Registry

Mr G W E JONES
Registrar of Companies

Mr J S BUSH
Secretary
Standing Committee on Company Law Reform

Ms D SILKSTONE
Registry Solicitor

Department of Justice

Mr J E GUNTER
Senior Assistant Law Draftsman

Mr Vidy CHEUNG
Senior Government Counsel

Clerk in attendance : Miss Becky YU
Chief Assistant Secretary (1)1

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Assistant Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 522/02-03 -- Minutes of the meeting held on
28 November 2002

LC Paper No. CB(1) 541/02-03 -- Minutes of the meeting held on
6 December 2002)

The minutes of the meetings held on 28 November and 6 December 2002 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 644/02-03(01) -- Assistant Legal Adviser 7's letter dated 3 January 2003 to the Administration

LC Paper No. CB(1) 644/02-03(02) -- Assistant Legal Adviser 7's comments on the Annex to the Administration's paper on governance of shadow directors issued under LC Paper No. CB(1) 448/02-03(02)

LC Paper No. CB(1) 644/02-03(03) -- List of follow-up actions arising from the discussion on 6 December 2002

LC Paper No. CB(1) 644/02-03(04) -- Administration's response to the lists of follow-up actions arising from the discussion on 28 November and 6 December 2002)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration was requested to -

- (a) inform whether there were cases where the current definition of "shadow director" was insufficient. Without prejudice to the intent of enhancing corporate governance, the Administration should review the definition taking into account overseas practices, particularly those in Australia;
- (b) provide information on the recommendation of the UK's Company Review Steering Group regarding the applicability of the provisions relating to quasi-loans in the UK Companies Act to a private company. To also advise the time-frame within which the UK Government would make a decision on such a recommendation;
- (c) review the propriety of extending the definition of "credit transaction" under new section 157H(7) to cover a tenancy agreement in respect of a property between a company and its directors, unless the payments made under such an arrangement were way below the market value. To also review the drafting of part (b) of the Chinese version of the definition to ensure consistency with that of the English one;
- (d) re-consider the transaction limit of \$500,000 under new section 157HA(8) as this was set in 1970s. To also provide information on the similar transaction limit under the UK Companies Act;

- (e) advise the number and details of enforcement actions taken against non-compliance of section 98(3). To also provide an undertaking that the Companies Registry will endeavour to expedite computerization with a view to tackling the difficulty in obtaining updated information on membership of companies, particularly on changes of shareholders of private companies;
- (f) make it a statutory requirement for the sole member and director of a one-member company to appoint a person to act in the place of director upon his death and provide details on the ways such appointment would be made. Reference could be made to section 201F of the Corporations Act 2001 in Australia;
- (g) advise the extent to which the company's auditor could, *as far as he was reasonably able to do so*, include in their reports loans to shadow directors whom they had no knowledge of and provide the legislative intent of section 161B(6); and
- (h) consult the Hong Kong Society of Accountants on new section 165(3)(b).

4. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1
Legislative Council Secretariat
20 January 2003

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Thursday, 9 January 2003, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000222	Chairman	Confirmation of minutes of meetings on 28 November and 6 December 2002 (LC Paper Nos. CB(1) 522 and 541/02-03)	
000223 - 000828	ALA7	Comments on the Administration's paper on governance of shadow directors - comparing Hong Kong with United Kingdom, Australia, Malaysia and Singapore (LC Paper No. CB(1) 644/02-03(02))	
000829 - 002119	Ms Miriam LAU ALA7 Administration Chairman Ms Emily LAU	Rationale for extending the definition of shadow directors to include someone who could influence a majority of directors and proposal to adopt the practice in Australia where definition of shadow director would not apply to those who gave advice in a business relationship with the directors or the company	The Administration to inform whether there were cases where the current definition of "shadow director" was insufficient. Without prejudice to the intent of enhancing corporate governance, the Administration should review also the definition taking into account overseas practices, particularly those in Australia
002120 - 002417	Administration	Discussion on LC Paper No. CB(1) 644/02-03(04)	
002418 - 002725	Ms Miriam LAU Administration Chairman	Justifications for extending the prohibition from making quasi-loans etc to directors	The Administration to provide information on the recommendation of the UK's Company Review Steering Group regarding the applicability of the provisions relating to

Time marker	Speaker	Subject(s)	Action required
			quasi-loans in the UK Companies Act to a private company. To also advise the time-frame within which the UK Government would make a decision on such a recommendation
002726 - 004002	Chairman Administration Ms Miriam LAU Mr Albert HO	Provision of accommodation to directors	The Administration to review the propriety of extending the definition of “credit transaction” under new section 157H(7) to cover a tenancy agreement in respect of a property between a company and its directors, unless the payments made under such an arrangement were way below the market value. To also review the drafting of part (b) of the Chinese version of the definition to ensure consistency with that of the English one
004003 - 004058	Chairman Administration	Ratification of a decision to provide loans etc to directors	
004059 - 004250	Chairman Administration	Interpretation of “purpose”	
004251 - 004836	Chairman Administration Mr NG Leung-sing Mr Eric LI	Transaction limit	The Administration to re-consider the transaction limit of \$500,000 under new section 157HA(8) as this was set in 1970s. To also provide information on the similar transaction limit under the UK Companies Act

Time marker	Speaker	Subject(s)	Action required
004837 - 011038	Chairman Administration Mr Eric LI Ms Miriam LAU Mr Albert HO Ms Emily LAU	Filing a statement by one-member company <ul style="list-style-type: none"> - Difficulties in obtaining updated information on company membership, particularly on changes in shareholders of private companies - Burden of compliance on companies if required to file changes in membership with Companies Registry - Compliance and enforcement of section 98 which required companies to allow public inspection of their registers of members 	The Administration to advise the number and details of enforcement actions taken against non-compliance of section 98(3). To also provide an undertaking that the Companies Registry will endeavour to expedite computerization with a view to tackling the difficulty in obtaining updated information on membership of companies, particularly on changes of shareholders of private companies
011039 - 011933	Chairman Administration Ms Miriam LAU Mr Eric LI ALA7	Convening a meeting to appoint a director upon the death of the sole member and director and the overseas experience of such an appointment	The Administration to make it a statutory requirement for the sole member and director of a one-member company to appoint a person to act in the place of director upon his death and provide details on the ways such appointment would be made. Reference could be made to section 201F of the Corporations Act 2001 in Australia
011934 - 014308	Administration Mr Eric LI Chairman Ms Emily LAU	Review the need for new sections 158(10)(a) and 161B(9) <ul style="list-style-type: none"> - Concern about responsibility of auditors to include in their reports loans made to shadow directors whom they had no knowledge of - Need for guidelines on what should be regarded 	The Administration to advise the extent to which the company's auditor could, <i>as far as he was reasonably able to do so</i> , include in their reports loans to shadow directors whom they had no knowledge of and provide the legislative

Time marker	Speaker	Subject(s)	Action required
		“as far as he is reasonably able to do so”	intent of section 161B(6)
014309 - 014601	Chairman Administration	Contracts with sole member who was also a director	
014602 - 014910	Chairman ALA7 Administration	Decision of Standing Committee on Company Law Reform to exclude provision of indemnities to officers and auditors for liability incurred by them to a third party under section 165(1)	
014911 - 015300	Chairman Administration	Insurance for auditors against liabilities	The Administration to consult the Hong Kong Society of Accountants on new section 165(3)(b)
015301 - 015535	Administration Chairman Ms Emily LAU	Reply to deputations' views on the Bill	