

立法會
Legislative Council

LC Paper No. CB(1) 1030/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

**Minutes of the twelfth meeting
held on Thursday, 20 February 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Albert HO Chun-yan
Hon CHAN Kwok-keung
Hon SIN Chung-kai

Members absent : Dr Hon David CHU Yu-lin, JP
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS, JP

Public officers attending : 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)

Companies Registry

Mr Edward LAU
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) 867/02-03 -- Minutes of the meeting held on
23 January 2003)

The minutes of meeting held on 23 January 2003 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 934/02-03(01) -- List of follow-up actions arising from
the discussion on 23 January 2003

LC Paper No. CB(1) 934/02-03(02) -- Administration's responses to the lists
of follow-up actions arising from the
discussion on 9 and 23 January 2003

LC Paper No. CB(1) 934/02-03(03) -- Administration's response to Assistant
Legal Adviser 7's letter dated
14 January 2003 issued under LC
Paper No. CB(1) 777/02-03(01)

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

3. The Administration was requested to -
- (a) consider if the definition of director should include shadow director unless otherwise specified so that the liabilities applicable to the former would also apply to the latter and whether the extension of the definition of director to shadow director in the 15 specific cases would better serve the purpose;
 - (b) make it clear that a person subject to a disqualification order under section 168D(1)(a) should not be a shadow director of any company;
 - (c) discuss with the Hong Kong Society of Accountants the need to update its Accounting Bulletin and its code in the wake of the extension from “relevant loan” to “relevant transaction”;
 - (d) consider that the amount prescribed under new section 178(4) could be greater than or smaller than \$10,000 to allow greater flexibility;
 - (e) advise the proposed content of the specified form in respect of the release of the registered charge under new section 85; the documents to be provided to evidence such a release as well as the details to be entered in the Companies Registry, particularly if the registered charge was only partially released; and the extent of information which the public might obtain upon a search of the Companies Registry; and
 - (f) invite views from the Hong Kong Bar Association, Law Society of Hong Kong and Hong Kong Association of Banks on the draft specified form referred to in (e).
4. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Thursday, 20 February 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000055	Chairman	Confirmation of minutes of the meeting held on 23 January 2003 (LC Paper No. CB(1) 867/02-03)	
000056 – 001819	Administration Chairman ALA7 Mr Albert HO	Discussion on the Administration's response to concerns raised at the meetings on 23 and 9 January 2003 (LC Paper No. CB(1) 934/02-02(02) - Governance of shadow directors and comparison with overseas countries	
001820 – 002119	Chairman Mr Albert HO Administration	Concept of shadow directors and its application in the Companies Ordinance	
002120 – 002832	Administration Mr SIN Chung-kai Mr Albert HO Chairman	Administration's proposal to introduce Committee Stage amendments to repeal requirement on filing of particulars of shadow directors with Company Registrar under section 158	
002833 – 003444	Chairman ALA7 Mr Albert HO Administration	The need to spell out the liabilities and prohibitions of shadow directors under section 2	
003445 – 004446	Administration Chairman Mr Albert HO	Whether a person subject to a disqualification order under section 168D(1)(a) could act as a shadow director of a company	The Administration to make it clear that a person subject to a disqualification order under section 168D(1)(a) should not be a shadow director of any company

Time marker	Speaker	Subject(s)	Action required
004447 –004815	Mr Albert HO Administration Chairman	Discussion on whether the definition of director should include shadow director. If so, the liabilities applicable to the directors would also apply to the shadow directors unless otherwise specified. If not, the liabilities and prohibitions applicable to shadow directors would need to be spelt out separately	The Administration to consider if the definition of director should include shadow director unless otherwise specified so that the liabilities applicable to the former would also apply to the latter and whether the extension of the definition of director to shadow director in the 15 specific cases would better serve the purpose
004816 –005041	Chairman Administration	Appointment of a person to act in place of the sole director(who was also the sole member) of the company	
005042 –005241	Chairman Administration	Enforceability of a guarantee or security provided under section 157I	
005242 –010547	Chairman Administration Mr Albert HO ALA7	Interpretation of the phrase “As far as they are reasonably able to do so” in the existing section161B(6) and the requirements for disclosure of loans to directors or other related parties in the United States	The Administration to discuss with the Hong Kong Society of Accountants the need to update its Accounting Bulletin and its code in the wake of the extension from “relevant loan” to “relevant transaction”
010548 –010659	Chairman Administration	New section 165(3)(b)	
010700 –012045	Chairman Administration Mr Albert HO	Discussion on summary of concerns (LC Paper No. CB(1) 251/02-03) - Clauses 70, 76, 79(1) to (5), 86, 108 and others	The Administration to consider that the amount prescribed under the new section 178(4) could be greater than or smaller than \$10,000 to allow greater flexibility

Time marker	Speaker	Subject(s)	Action required
012046 –012919	Chairman Administration Mr SIN Chung-kai	Discussion on LC Paper No. CB(1) 777/02-03(04) - Administration's response to comments from members and deputations on certain provisions - Clauses 2(1) and 26(2)	
012920 –013500	Administration Chairman Mr Albert HO	Clause 33 - new section 85 on entries of satisfaction and release of property from charge	
013501 –014052	ALA7 Mr Albert HO Chairman Administration	Doubts on whether property would be actually released from charge when the Registrar entered on the register a memorandum of satisfaction and release of property if the specified form could be signed by the director or officer of the company	
014053 –014242	Chairman	Difference between the existing arrangement and the new arrangement under new section 85 with regard to release of property from charge	
014243 –015157	Chairman Administration Mr Albert HO	Information available upon a search in the Company Registry	The Administration to invite views from the Hong Kong Bar Association, Law Society of Hong Kong and Hong Kong Association of Banks on the draft specified form under new section 85
015158 – 015329	Administration	Partial release of property from charge	The Administration to advise the proposed content of the specified form in respect of the release of the registered charge under new section 85; the documents to be

Time marker	Speaker	Subject(s)	Action required
			provided to evidence such a release as well as the details to be entered in the Companies Registry, particularly if the registered charge was only partially released; and the extent of information which the public might obtain upon a search of the Companies Registry
015330 –020030	Chairman Administration Mr Albert HO	Clauses 44, 58, 63 and 65	
020031 – 020328	Chairman Administration Mr Albert HO Mr SIN Chung-kai	Business for the next meetings	