

立法會
Legislative Council

LC Paper No. CB(1) 1091/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

**Minutes of the thirteenth meeting
held on Thursday, 27 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)
Dr Hon David CHU Yu-lin, JP
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
- Members absent** : Hon Albert HO Chun-yan
Hon SIN Chung-kai
- 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

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 Meeting with the Administration

(LC Paper No. CB(1) 989/02-03(01) -- List of follow-up actions arising from the discussion on 20 February 2003

LC Paper No. CB(1) 989/02-03(02) -- Administration's responses to the lists of follow-up actions arising from the discussion on 23 January and 20 February 2003

LC Paper No. CB(1) 989/02-03(03) -- Comments from the Hong Kong Association of Banks on the Administration's response circulated under LC Paper No. CB(1) 777/02-03(04))

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

3. The Administration was requested to -
- (a) advise how the bank, which made a loan to a director of a company with security (property) provided by the latter in contravention of new section 157H, could exercise its property rights under the security document should the director fail to repay the loan, and whether the bank was a secured or unsecured creditor in the event of liquidation of the company;
 - (b) advise why was it necessary for new section 157I(3)(a) to refer to a person who was not a director of a company;
 - (c) seriously re-consider members' suggestion of making it a statutory mandatory requirement for the sole member and director of a one-person company to appoint a person to act in the place of director upon his death. To provide a copy of the Administration's letter to the Law Society of Hong Kong seeking the latter's views on such a requirement and the draft Committee Stage amendments in respect of the two-month period in new section 153A(4);
 - (d) respond to the Hong Kong Association of Banks' further comments on clauses 26(2) and 33; and
 - (e) provide the draft specified form in respect of the release of the registered charge under new section 85 for members' reference.

4. Members agreed to the following schedule of meetings in April and May 2003 -

Thursday, 3 April 2003, at 8:30 am;
Tuesday, 15 April 2003, at 8:30 am
Thursday, 24 April 2003, at 4:30 pm; and
Tuesday, 6 May 2003, at 10:45 am

5. There being no other business, the meeting ended at 12:45 pm.

(Post meeting note: As agreed at the meeting, the Chairman contacted a member of the Probate Committee of the Law Society of Hong Kong regarding the need to introduce a statutory mandatory requirement for the sole member and director of a one-person company to appoint a person to act in the place of director upon his death. She was given to understand that -

- (a) The letter from the Administration did not ask them about the time needed to apply for a special grant of probate. It only asked them whether they preferred to have a mandatory or optional system to enable one-person companies to appoint a person to act in case of the death of the sole member/director; and

- (b) The views of the Committee were divided. Some members of the Committee were against a mandatory system as one-person companies might have other options. For example, a resolution appointing a manager or some other person to deal with the assets despite the death of the sole member. There would then be no urgency prior to the grant of the probate. The considerations might be different for actively trading one-person companies and passive investment holding companies.)

Council Business Division 1
Legislative Council Secretariat
11 March 2003

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Thursday, 27 February 2003, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000614	Chairman Administration Ms Emily LAU	Discussion on Administration's response to the concerns raised at the meetings on 20 February and 23 January 2003 (LC Paper No. CB(1) 989/02-03(02) - Definition of "shadow director"	
000615 - 000903	Administration Chairman	Disqualification order under section 168D(1)(a)	
000904 - 001017	Chairman Administration	Inviting views from the Hong Kong Bar Association etc on the draft specified form	The Administration to provide the draft specified form in respect of the release of the registered charge under new section 85 for members' reference
001018 - 002147	Chairman Administration Ms Emily LAU	Enforceability of security provided by a company in contravention of section 157H	
002148 - 002544	ALA7 Chairman	Section 157I (3)(a) and (b)	
002545 - 003021	Ms Miriam LAU ALA7 Administration Chairman	Whether the bank which made a loan to a director of a company with security provided by the latter in contravention of new section 157H should be regarded as secured creditor or unsecured creditor in the event of liquidation of the company	The Administration to advise how the bank, which made a loan to a director of a company with security (property) provided by the latter in contravention of new section 157H, could exercise its property rights under the security document should the

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			director fail to repay the loan, and whether the bank was a secured or unsecured creditor in the event of liquidation of the company
003022 – 003156	Ms Miriam LAU ALA7	Whether there was a need for new section 157I(3)(a) to refer to a person who was not a director of a company	The Administration to advise why was it necessary for new section 157I(3)(a) to refer to a person who was not a director of a company
003157 –004048	ALA7 Administration Mr Eric LI	How property rights under the security document could be exercised by the bank if the director failed to repay the loan and the company did not obtain release of security from the bank	
004049 –004719	Ms Emily LAU ALA7 Clerk Administration	Whether the Hong Kong Association of Banks (HKAB) had raised concerns about new sections 157I(2) and (3)(b)	
004720 –005932	Ms Emily LAU ALA7 Administration Chairman	Application of section 157I(3)(b) and the position of innocent third parties under the UK Companies Act and the Bill	
005933 –010424	Administration Mr Eric LI Chairman	Legislative intent of sections 157I(2) and (3)(b)	
010425 – 011255	Chairman Mr Eric LI Ms Emily LAU	Whether the present drafting of section 157I reflected its legislative intent and the civil consequence of contravening section 157H	

Time marker	Speaker	Subject(s)	Action required
011256 – 012249	Ms Emily LAU Administration Chairman Mr Eric LI ALA7	Need for consultation with HKAB on new sections 157(I)(2) and (3)(b)	The Bills Committee to write to HKAB, Real Estate Developers Association and the Hong Kong Mortgage Corporation, seeking their views on new sections 157(I)(2) and (3)(b), and enclosing the Administration's paper at LC Paper No CB(1) 989/02-03(02)
012250 – 012519	Chairman ALA7 Administration	LC Paper No. CB(1) 989/02-03(03) - Comments from HKAB on the Administration's response circulated under LC Paper No. CB(1) 777/02-03(04))	The Administration to respond to HKAB's further comments on clauses 26(2) and 33
012520 - 014008	Administration Ms Emily LAU Chairman Mr Eric LI	Response from the Law Society of Hong Kong on the need to introduce a statutory mandatory requirement for the sole member and director of a one-person company to appoint a person to act in the place of director upon his death	The Administration to - (a) provide a copy of its letter to the Law Society of Hong Kong seeking the latter's views on such a requirement and the draft Committee Stage amendments in respect of the two-month period in new section 153A(4); and (b) seriously re-consider members' suggestion of making it a statutory mandatory requirement for the sole member and director of a one-person company to appoint a person to act in the place of director upon his death

Time marker	Speaker	Subject(s)	Action required
014009 –014321	Ms Emily LAU Chairman ALA7	Liaison with the Probate Committee on the need for introducing the statutory mandatory requirement	The Chairman to contact the Probate Committee on the need for introducing the statutory mandatory requirement
014322 – 014629	Chairman Ms Emily LAU Mr Eric LI	Date of next meeting	
014630 –015029	ALA7 Chairman Administration	List of outstanding actions to be taken by the Administration	The Clerk to prepare a list of outstanding actions by the Administration for the latter to advise on the timeframe for discussion
015030 - 015524	ALA7 Mr Eric LI Chairman Administration	Interpretation of the phrase “as far as they are reasonably able to do so” in the existing section 161B(6)	

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