

立法會
Legislative Council

LC Paper No. CB(1) 1191/02-03

(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

**Minutes of the fourteenth meeting
held on Wednesday, 12 March 2003, at 8:30 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 Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
- 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 SIN Chung-kai
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)¹

Companies Registry

Mr G W E JONES
Registrar of Companies

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

In the absence of a quorum in the beginning, members agreed that the meeting be proceeded as an informal meeting. A quorum was subsequently reached at 8:46 am.

I Confirmation of minutes

- (LC Paper No. CB(1) 1030/02-03 -- Minutes of the meeting held on
20 February 2003
LC Paper No. CB(1) 1091/02-03 -- Minutes of the meeting held on
27 February 2003)

The minutes of meetings held on 20 and 27 February 2003 were confirmed.

II Meeting with the Administration

- (LC Paper No. CB(1) 1092/02-03(01) -- List of follow-up actions arising from the discussion on 27 February 2003
- LC Paper No. CB(1) 1092/02-03(02) -- Administration's responses to the lists of follow-up actions arising from the discussion on 23 January, 20 and 27 February 2003
- LC Paper No. CB(1) 1092/02-03(03) -- List of outstanding actions to be taken by the Administration
- LC Paper No. CB(1) 1092/02-03(04) -- Letter dated 4 March 2003 from Clerk to Bills Committee to Hong Kong Association of Banks, Hong Kong Bar Association, Hong Kong Mortgage Corporation Limited, Law Society of Hong Kong and Real Estate Developers Association of Hong Kong on the interpretation of proposed sections 157I(2) and 157I(3)(b) of the Bill
- LC Paper No. CB(1) 1092/02-03(05) -- Reply dated 6 March 2003 to LC Paper No. CB(1) 1092/02-03(04) from the Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1) 1092/02-03(06) -- Administration's letter dated 5 February 2003 to the Probate Committee of the Law Society of Hong Kong and the latter's reply dated 26 February 2003
2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to -
- (a) advise the model used by the Government in drafting section 157I and whether there had been any court decision or interpretation of similar provisions and whether the relevant provisions were in line with their equivalent under the Bankruptcy Ordinance (Cap. 6), particularly those which related to the interest of an innocent third party;
 - (b) advise how the interest of a bona fide innocent third party could be protected if he had acquired the property from the mortgagee but later found out that it was a security provided by a company to the mortgagee in contravention of new section 157H;

- (c) consider re-drafting new section 157I with reference to section 341 of the UK Companies Act. If this was not feasible for the time being, consideration should be given to referring the subject to the Standing Committee on Company Law Reform for further discussion;
 - (d) respond to the letter dated 6 March 2003 from the Real Estate Developers Association of Hong Kong regarding section 157I; and
 - (e) include in Form M2 - Memorandum of Satisfaction or Release of Property from Charge the requirement for evidence of discharge and evidence regarding change in identity of mortgagee to be signed by the mortgagee concerned if the form was lodged by a person other than the mortgagee.
4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
21 March 2003

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Wednesday, 12 March 2003, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001 - 000619	Chairman ALA7	List of outstanding actions to be taken by the Administration (LC Paper No. CB(1) 1092/02-03(03))	
000620 - 000821	Chairman	Confirmation of minutes of the meetings held on 20 and 27 February 2003 (LC Paper Nos. CB(1) 1030 and CB(1) 1091/02-03)	
000822 - 001216	Ms Emily LAU Chairman Mr Albert HO	Views of the Probate Committee of the Law Society on the need for mandatory requirement for the sole director of a one-person company to appoint a person to act in place of director upon his death	
001217 - 002453	Administration Chairman	Administration's responses to the lists of follow-up actions arising from the discussion on 23 January, 20 and 27 February 2003 (LC Paper CB(1) 1092/02-03(02)) - Exercise of property rights under the security document in relation to a security provided by a company in contravention of new section 157H Reference to a person who is not a director of a company under new section 157I(3)(a)	

Time marker	Speaker	Subject(s)	Action required
002454 - 002937	ALA7 Chairman	The responses from Hong Kong Association of Banks (HKAB), Hong Kong Mortgage Corporation Limited, and Real Estate Developers Association of Hong Kong (REDA) on the interpretation of proposed sections 157I(2) and 157I(3)(b) of the Bill	
002938 - 003316	Administration Chairman	REDA's concern about the need for protection of rights of innocent third parties	The Administration to respond to the letter dated 6 March 2003 from REDA regarding section 157I
003317 - 004227	Ms Miriam LAU Administration Chairman ALA7 Ms Emily LAU Mr Albert HO	Comparison with section 341 of the UK Companies Act on the protection of rights of innocent third parties	
004228 - 005910	Ms Miriam LAU Chairman Mr Albert HO ALA7 Administration	<p>Practical difficulties in dealing with property transactions which contravened section 157H and whether the proposed provisions under new section 157I were in line with the Bankruptcy Ordinance (Cap. 6)</p> <p>Possibility of adopting the "voidable" concept under UK Companies Act which provided more protection for innocent third parties</p>	The Administration to consider re-drafting new section 157I with reference to section 341 of the UK Companies Act. If this was not feasible for the time being, consideration should be given to referring the subject to the Standing Committee on Company Law Reform for further discussion

Time marker	Speaker	Subject(s)	Action required
005911 - 011627	Chairman Administration Ms Miriam LAU ALA7	Interest of a bona fide innocent third party who had acquired the property from the mortgagee but later found out that it was a security provided by a company to the mortgagee in contravention of the new section 157H	The Administration to advise how the interest of a bona fide innocent third party could be protected if he had acquired the property from the mortgagee but later found out that it was a security provided by a company to the mortgagee in contravention of new section 157H
011628- 011927	Ms Miriam LAU Administration ALA7 Chairman	The model used by the Government in drafting section 157I and whether there had been any court decision or interpretation of similar provisions	The Administration to advise the model used by the Government in drafting section 157I and whether there had been any court decision or interpretation of similar provisions and whether the relevant provisions were in line with their equivalent under the Bankruptcy Ordinance, particularly those which related to the interest of an innocent third party
011928 - 012514	Chairman Administration	Appointment of a person to act in the place of the sole director (who is also the sole member) of a company upon his death	
012515 - 012540	Chairman Administration	HKAB's further comments on clauses 26(2) and 33; Prescribed amount under new section 178(4)	

Time marker	Speaker	Subject(s)	Action required
012541 - 014332	Administration Chairman ALA7	Release of registered charge under new section 85	The Administration to include in Form M2 - Memorandum of Satisfaction or Release of Property from Charge the requirement for evidence of discharge and evidence regarding change in identity of mortgagee to be signed by the mortgagee concerned if the form was lodged by a person other than the mortgagee
014333 - 014516	Chairman Administration	Definition of "credit transaction" under new section 157H(7); Transaction limit of \$500,000 under new section 157HA(8)	
014517 - 014655	Chairman ALA7 Administration	Policy aspects of new section 157H to be discussed at the meeting on 20 March 2003 while Committee Stage amendments to be discussed at the meeting on 3 April 2003	