

立法會
Legislative Council

LC Paper No. CB(1) 249/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

Minutes of fourth meeting
held on Tuesday, 22 October 2002, at 8:30 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 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** : Mr Esmond LEE
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) (Companies)
- Mr Arthur AU
Assistant Secretary for Financial Services and the
Treasury (Financial Services) (Companies) 1
- Mr G W E JONES
Registrar of Companies

Mr J S BUSH
Secretary
Standing Committee on Company Law Reform

Ms D SILKSTONE
Registry Solicitor

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 of previous meeting

(LC Paper No. CB(1) 69/02-03 -- Minutes of the meeting held on
4 October 2002)

The minutes of the meeting held on 4 October 2002 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1) 101/02-03(01) -- List of follow-up actions arising
from the discussion on
15 October 2002

LC Paper No. CB(1) 101/02-03(02) -- Administration's response to
CB(1) 101/02-03(01)

LC Paper No. LS8/02-03 -- A note prepared by the Legal
Service Division regarding
Mr David WEBB's comments on
the Legal Service Division Report
circulated under LC Paper No.
LS50/01-02

LC Paper No. CB(1) 101/02-03(03) -- Summary of deputations' concerns

LC Paper No. CB(1) 101/02-03(04) -- Administration's response to
CB(1) 101/02-03(03))

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

3. The Administration was requested to -
- (a) include an undertaking in the speech to be delivered by the Secretary for Financial Services and the Treasury at the resumption of Second Reading debate on the Bill that the Administration would examine the cost implications on requisitionists and whether provisions such as forfeitable deposits should be introduced. If so, consideration should be given to including such provisions in the Companies (Amendment) Bill 2003 to be introduced in May 2003;
 - (b) advise the difference in expenses incurred by a requisitionist to propose a resolution at an annual general meeting under section 111 and an extraordinary general meeting under section 113;
 - (c) advise whether the proposed removal of directors by ordinary resolution applied to statutory bodies or public companies, including the Stock Exchange of Hong Kong (SEHK) and the Mass Transit Railway Corporation, and whether the directors so removed could be eligible for re-appointment;
 - (d) advise the difference between “director” and “shadow director”; how the definition of “shadow director” operates; court cases where shadow directors were prosecuted for negligence or fraud; the liability of shadow directors of listed public companies such as SEHK; and penalty for failure to keep a register of directors and secretaries under section 158;
 - (e) advise whether the scope of “shadow director” covered those who acted as consultants/advisers to organizations and secured creditors such as banking institutions;
 - (f) review new section 161B since there might be circumstances where auditors were not aware of the existence of shadow directors in the course of preparing the accounts of loans to officers;
 - (g) provide the number of prosecutions under the Crimes Ordinance (Cap. 200) for making false declaration under the Companies Ordinance (Cap. 32); and
 - (h) advise the different scopes of the existing and past section 349; whether the proposed level of penalty under section 349 was sufficient; and the measures which the Administration would put in place to enhance enforcement against the making of false statement.

4. There being no other business, the meeting ended at 10.30 am

Council Business Division 1
Legislative Council Secretariat
8 November 2002

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Tuesday, 22 October 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000123	Chairman	Confirmation of minutes of meeting on 4 October 2002 (LC Paper No. CB(1) 69/02-03)	
000124 - 001047	Administration	Administration's response to the concerns raised at the meeting on 15 October 2002 (LC Paper No. CB(1) 101/02-03(02)) regarding the threshold for shareholders' proposals, the review of the Companies Ordinance (Cap. 32) (CO) and the right to resort to court under section 8 of CO	
001048 - 001825	Chairman, Ms Emily LAU, Administration	Costs incurred in circulating shareholders' proposals and the feasibility of adopting a deposit system as suggested by Mr David WEBB	The Administration to include an undertaking in the speech to be delivered by the Secretary for Financial Services and the Treasury at the resumption of Second Reading debate on the Bill that the Administration would examine the cost implications on requisitionists and

			whether provisions such as forfeitable deposits should be introduced. If so, consideration should be given to including such provisions in the Companies (Amendment) Bill 2003 to be introduced in May 2003.
001826 - 002452	Mr Albert HO Chairman, Administration	Allotment of costs incurred from holding of meetings, eg publicity and venue costs	
002453 - 002704	Ms Miriam LAU, Chairman	Mechanism to prevent frivolous proposals	
002705 - 003208	Ms Emily LAU, Administration, Chairman	Expedition of implementation of company reform	
003209 - 003603	Administration Ms Emily LAU, Ms Miriam LAU	Section 113(5) of CO regarding the convening of extraordinary general meetings	The Administration to advise the difference in expenses incurred by a requisitioner to propose a resolution at an annual general meeting under section 111 and an extraordinary general meeting under section 113
003604 - 003817	Chairman, Administration	Administration's response to summary of deputations' concerns at LC Paper No. CB(1) 101/02-03(04)	

003818 - 003946	Administration, Mr Albert HO, Chairman	Removing directors by ordinary resolution	
003947 - 004512	ALA7, Chairman	Legal Service Division's note circulated under LC Paper No. LS8/02-03 regarding the removal of directors by ordinary resolution under clause 57	
004513 - 004736	Mr Henry WU, Administration, Chairman, Ms Miriam LAU	Removal of government-appointed directors of listed companies and statutory corporations such as the Hong Kong Stock Exchange (SEHK) and Mass Transit Railway Corporation	The Administration to advise whether of the proposed removal of directors by ordinary resolution applied to statutory bodies or public companies, including the Stock Exchange of Hong Kong and the Mass Transit Railway Corporation, and whether the directors so removed could be eligible for re-appointment
004737 - 004815	Ms Emily LAU	Removal and re- appointment of directors	
004816 - 005325	Chairman, Administration, Ms Emily LAU	Statutory definition of "shadow director"	

005326 - 005636	Mr Albert HO, Chairman, Administration	Definition of “shadow directors” and their liability; court cases involving prosecution of “shadow directors” for fraud and negligence	The Administration to advise the difference between “director” and “shadow director”; how the definition of “shadow director” operated; court cases
005637 - 005808	ALA7	Duty of company to include “shadow director” in its register of directors and secretaries under section 158	where shadow directors were prosecuted for negligence or fraud; the liability of shadow directors of listed public companies such as SEHK; and penalty for failure to keep a register of directors and secretaries under section 158
005809 - 005940	Mr Albert HO, Chairman, ALA7	Court cases defining shadow directors	
005941 - 010017	Mr Henry WU, Chairman	Liability of shadow directors in public companies such as SEHK	
010018 - 010742	Ms Emily LAU, ALA7, Chairman, Administration	Compliance with requirement to keep register of directors and secretaries under section 158	
010743 - 010840	Mr Albert HO, Chairman, Administration	Penalty for failure to comply with requirement under section 158	
010841 - 012035	Administration, Chairman, Ms Miriam LAU, Mr Albert HO	Whether the scope of “shadow director” should include consultants/advisers and secured creditors; the need to define “professional capacity” under the definition	The Administration to advise whether the scope of “shadow director” covered those who acted as consultants/advisers to organizations and secured creditors such as banking institutions

012036 - 012345	ALA7	Exclusion of holding company from definition of “shadow directors” of its subsidiary companies for sections 157H and 162B	
012346 - 012606	Mr Eric LI, Chairman, Administration	Difficulty in complying with the disclosure requirements under section 161B as auditors might not be aware of the existence of shadow directors	The Administration to review new section 161B since there might be circumstances where auditors were not aware of the existence of shadow directors in the course of preparing the accounts of loans to officers.
012607 - 012836	Administration, Chairman	Extending the statutory provisions to cover in generic terms provision of financial assistance to directors	
012837 - 012959	Chairman, Administration	Permitting the formation of a company by one person	
012960 - 013131	Chairman, Administration	Authorization of electronic forms of publicity	
013132 - 013316	Chairman, Administration	Specified forms	
013317 - 013704	Mr Eric LI, Administration, Chairman	Need to include the Society of Chinese Accountant and Auditors in the list of consultees of the Bill as they were the main users of the forms	

013705 - 013930	Chairman, Administration	Replacement of statutory declarations by written statements	
013931 - 014357	ALA7, Ms Miriam LAU, Chairman, Administration	Penalty for false statements under section 349 of the CO and the Crimes Ordinance	The Administration to provide the number of prosecutions under the Crimes Ordinance (Cap. 200) for making false declaration under CO
014358 - 015018	Mr Eric LI, Administration	Enforcement measures to ensure compliance with CO	The Administration to advise the different scopes of the existing and past section 349; whether the proposed level of penalty under section 349 was sufficient; and the measures which the Administration would put in place to enhance enforcement against the making of false statement.
015019 - 015122	Ms Emily LAU Chairman, Administration	Need for adequate resources to ensure compliance of CO	
015123 - 015630	Chairman	Whether the proposed level of penalty for false statements was sufficient	
015631 - 015821	Mr Eric LI, Chairman, Administration	Different scopes of the existing and past section 349	
015822 - 020706	Ms Emily LAU, Chairman	Dates for next meetings	

Note : The audio records of the above proceedings are kept at the LegCo Library

Council Business Division 1
Legislative Council Secretariat
 8 November 2002