

立法會
Legislative Council

LC Paper No. CB(1) 339/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

Minutes of fifth meeting
held on Wednesday, 6 November 2002, 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 Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon CHAN Kwok-keung
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS, JP

Member absent : Dr Hon David CHU Yu-lin, JP

Attendance by invitation : Financial Services and the Treasury Bureau

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

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) 124/02-03 -- Minutes of the meeting held on
15 October 2002)

The minutes of the meeting held on 15 October 2002 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 194/02-03(01) -- List of follow-up actions arising
from the discussion on
22 October 2002

LC Paper No. CB(1) 194/02-03(02) -- Administration's response to
CB(1) 194/02-03(01)

- LC Paper No. CB(1) 194/02-03(03) -- Administration's response to summary of deputations' concerns (as at 24 October 2002)
- LC Paper No. CB(1) 212/02-03(01) -- Legal Service Division's letters dated 1 November 2002 to the Administration
- LC Paper No. CB(1) 219/02-03(01) -- Submission from Democratic Alliance for Betterment of Hong Kong)

2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to -
 - (a) include in the review of cost implications on requisitionists the rationale behind the difference between sections 113 where the company paid for all reasonable costs, including the cost of circulation, printing and translation, and 115A where the requisitioner had to pay for the costs of circulation, printing and translation etc;
 - (b) provide a paper on "shadow director". The paper should include -
 - (i) policy intent for extending the scope of "shadow director" to cover persons in accordance with whose directions or instructions the directors or a majority of the directors of the company were accustomed to act;
 - (ii) impact of such a provision, particularly on de facto directors of family-owned companies, foreign investors, trustee companies, trustees and nominee directors of offshore companies registered in Hong Kong;
 - (iii) why the Government said that a receiver or manager appointed by the secured creditor to manage the company's property for repayment of the debts was not considered to be a "shadow director" because he acted in his "professional capacity". For example, the secured creditor being the father of the director of the company appointed himself as the receiver would not be acting in his professional capacity. Some receivers or managers would only act through the directors, whether they would be considered "shadow director";

- (iv) practicality of section 158 if no enforcement had ever been taken against non-compliance and if the whole point of a “shadow director” was that he did not wish to be known. Consideration should be given to enhancing public understanding on the need for a company to keep a register of its directors (including shadow directors) consequent upon the proposed expansion of the scope of “shadow director”;
 - (v) overseas experience in governing “shadow director”; and
 - (vi) consideration of the above in the light of the provisions which required companies to disclose loans made to its “shadow directors”.
- (c) consider keeping records of prosecution against negligence or fraud with reference to the offender’s occupation or position in a company.
4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
21 November 2002

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Wednesday, 6 November 2002, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000123	Chairman	Confirmation of minutes of meeting on 15 October 2002 (LC Paper No. CB(1) 124/02-03)	
000124 - 000629	Administration Chairman Ms Emily LAU Mr Albert HO	Expenses incurred by a requisitioner (LC Paper No. CB(1)194/02-03(01))	
000630 - 001540	Chairman Administration Ms Emily LAU	The difference in terms of liability of cost on requisitionists in circulating proposals under sections 113 (for an extraordinary general meeting) and 115A (for an annual general meeting)	The Administration to include in the review of cost implications on requisitionists the rationale behind the difference between sections 113 where the company paid for all reasonable costs, including the cost of circulation, printing and translation, and 115A where the requisitioner had to pay for the costs of circulation, printing and translation etc
001541 - 002059	Administration Chairman Mr Albert HO Ms Emily LAU	Removal of a director by an ordinary resolution	
002060 - 002843	Chairman Administration Mr Albert HO	Discussion on whether section 157B(1) should apply to the removal of directors of organizations not registered under the Company Ordinance (Cap. 32) (CO)	

Time marker	Speaker	Subject(s)	Action required
002844 - 002940	Administration Ms Miriam LAU	Shadow directors	
002941 - 003437	Ms Emily LAU Administration	Keeping records of prosecution against negligence and fraud with reference to the offender's occupation or position in the company	The Administration to consider keeping records of prosecution against negligence or fraud with reference to the offender's occupation or position in a company
003438 - 004410	Mr Albert HO Chairman Administration	Definition of "shadow director" and discussion on whether the father or a relative of the company, being the secured creditor who appointed himself as the receiver, would be regarded as a "shadow director" since he would unlikely be acting in a professional capacity	The Administration to review the definition of shadow director, taking into account secured creditors who might be family members who were not acting in their professional capacity and receivers or managers who would only act through directors
004411 - 004625	Mr Albert HO Chairman Mr Henry WU Administration	Policy intent for extending the scope of "shadow director" to cover persons in accordance with whose directions or instructions the directors or a majority of the directors of the company were accustomed to act	The Administration to advise the policy intent for extending the scope of "shadow director" to cover persons in accordance with whose directions or instructions the directors or a majority of the directors of the company were accustomed to act
004626 - 005500	Ms Emily LAU Administration Ms Miriam LAU	Enforcement under section 158 for failure of companies to keep a register of its directors and secretaries, including shadow directors	The Administration to advise overseas experience in governing "shadow director" and to consider enhancing public understanding on the need for a company to keep a register of its directors

Time marker	Speaker	Subject(s)	Action required
			(including shadow directors) consequent upon the proposed expansion of the scope of “shadow director”
005501 - 005605	Administration	Disqualification of de facto directors who were not registered as directors but who acted as such	
005606 - 010158	Ms Miriam LAU Administration Chairman	Difference between shadow and de facto directors	
010159 - 011032	Mr Albert HO Administration Chairman Mr Eric LI	Due diligence check by auditors on particulars of loans made to shadow directors	The Administration to advise the provisions which required companies to disclose loans made to its shadow directors
011033 - 012021	Ms Emily LAU Administration Chairman Mr CHAN Kam-lam Mr Albert HO Mr Eric LI	Non-compliance and non-enforcement of section 158	The Administration to advise the practicality of section 158 if no enforcement had ever been taken against non-compliance
012022 - 012247	Mr Eric LI	Impact of section 158 on foreign investors, trustees and nominee directors of offshore companies registered in Hong Kong and the need for consultation with professional bodies	The Administration to advise the impact of such a provision, particularly on de facto directors of family-owned companies, foreign investors, trustee companies, trustees and nominee directors of offshore companies registered in Hong Kong

Time marker	Speaker	Subject(s)	Action required
012248 - 013318	Ms Miriam LAU Mr Henry WU Chairman	Discussion on provisions relating to shadow director in the Bill	
013319 - 013420	Chairman Administration	Registering of directors under section 158	
013421 - 014247	Mr Albert HO Administration Chairman Ms Emily LAU	Policy intent of extending scope of "shadow director" and the impact on foreign investors and nominee directors	
014248 - 014453	Mr Eric LI	Difficulty in complying with section 158, implications of the proposed arrangement and need for consultation with professional bodies	
014454 - 014528	Ms Emily LAU Chairman	Need for consultation on enforcement and compliance of section 158	
014529 - 014532	Mr Albert HO	Impact on trustee companies and nominee directors	
014533 - 014928	Chairman Administration Ms Emily LAU		The Administration to provide a paper on "shadow director" addressing the concerns raised by the Bills Committee
014929 - 015210	Administration Ms Emily LAU Chairman	Section 349 - Penalty for false statements	

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