

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 349/02-03  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/6/01/2

**Bills Committee on Companies (Amendment) Bill 2002**

**Minutes of sixth meeting**  
**held on Monday, 11 November 2002, at 4:30 pm**  
**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 SIN Chung-kai  
Hon Miriam LAU Kin-yee, JP  
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon Henry WU King-cheong, BBS, 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

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**I. Confirmation of minutes**

(LC Paper No. CB(1) 249/02-03 -- Minutes of the meeting held on  
22 October 2002)

The minutes of the meeting held on 22 October 2002 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1) 251/02-03(01) -- List of follow-up actions arising  
from the discussion on  
6 November 2002

LC Paper No. CB(1) 251/02-03(02) -- Administration's response to  
summary of deputations' concerns  
(as at 6 November 2002))

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

3. The Administration was requested to -
- (a) review the scope of “manager” which was considered too wide and might catch those who were not managers but received direct instructions from directors as in the case of companies with single director. Consideration should be given to confining “manager” to cover those who carried out executive functions under the direction of the board of directors of a company. It would be better for the Administration to exclude the term “manager” from the Bill if a clear definition was considered not feasible;
  - (b) review the need for proposed section 83(2) given that existing sections 80(1) and 83(1)(b)(ii) had already required the Registrar of Companies (R of C) to keep a register of all charges, including the amount secured;
  - (c) re-examine the justifications for proposed section 95A and the consequences for non-compliance. To enhance transparency in corporate governance, consideration should be given to requiring companies to file with R of C when the number of members fell to one or increased from one to two or more, and there was a transfer of shares;
  - (d) review the drafting of proposed section 153(A)(3) to take into account the situations where the company or any officer of the company would have practical difficulties to put the number of directors back from zero to one within two months. These might include the failure to convene a general meeting to appoint a new director after the death of the single director as the representative of the deceased director would take time to apply for probate;
  - (e) advise whether the company or any officer of the company would be held liable for carrying on basic business, such as payment of rent and renewal of licences, after the death of the single director; and
  - (f) provide as soon as practicable further responses to deputations’ views on clauses 26, 33 and 44.
4. There being no other business, the meeting ended at 6:30 pm.

**Proceedings of the meeting of the  
Bills Committee on Companies (Amendment) Bill 2002  
Meeting on Monday, 11 November 2002, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000139	Chairman	Confirmation of minutes of meeting on 22 October 2002 (LC Paper No. CB(1) 249/02-03)	
000140- 000326	Chairman Ms Emily LAU	Administration's response to summary of deputations' concerns at LC Paper No. CB(1) 251/02-03	
000327 - 000546	Administration Chairman	Views of the Democratic Alliance for Betterment of Hong Kong on the proposal to permit the formation of a company by one person	
000547 - 001326	Administration Chairman	Definition of "manager" and the need to confine managers to those who carried out executive functions	
001327 - 002146	Mr Eric LI Chairman Administration	Concern about the wide definition of "manager" and its impact on small and medium enterprises	The Administration to review the scope of "manager" which was considered too wide and might catch those who were not managers but received direct instructions from directors as in the case of companies with single director. Consideration should be given to confining "manager" to cover those who carried out executive functions under the direction of the board of directors

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			of a company. It would be better for the Administration to exclude the term “manager” from the Bill if a clear definition was considered not feasible
002147- 002258	Chairman Administration Ms Emily LAU	Definition of “secretary”	
002259 - 002306	Chairman Administration	Clause 4 - Mode of forming incorporated company	
002307 - 003153	Chairman Administration Ms Emily LAU	Clause 5 - Repealing right to resort to court under section 8	
003154 - 003332	Chairman Administration Mr Eric LI	Clause 7 - Change of name	
003333 - 003338	Chairman Administration	Clause 9 - Effect of memorandum and articles	
003339 - 003721	Chairman Administration	Clause 10 - Power to alter conditions in memorandum which could have been contained in articles	
003722 - 003919	Chairman Administration	Consequences of making false statements under clauses 14 to 17 and 19 to 23	
003920 - 004035	Chairman Administration	Clause 25 - Notice of increase of capital	
004036 - 004138	Chairman Administration	Clause 26 - Special resolution for reduction of share capital	The Administration to review the drafting of clause 26 taking into account deputations’ views

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004139 - 004337	Chairman Administration	Clause 31 - Duty of companies with respect to issue of certificates	
004338 - 004411	Chairman Administration	Clause 32 - Register of charges to be kept of Registrar of Companies (R of C)	
004412 - 005057	Mr Eric LI Chairman Administration	Need for disclaimer under section 83(2) regarding the information provided in the certificate	
005058 - 005618	Chairman Ms Emily LAU Administration	Requirement to keep a register of all charges, including the secured amount, under sections 80(1) and 83(1)(b)(ii)	The Administration to review the need for proposed section 83(2) given that existing sections 80(1) and 83(1)(b)(ii) had already required the Registrar of Companies (R of C) to keep a register of all charges, including the amount secured
005619 - 005651	Chairman Administration	Clause 33 - Entries of satisfaction and release of property from charge	The Administration to review the drafting of clause 33 taking into account deputations' views
005652 - 005855	Chairman Administration	Clause 34 - Extension of time for registration, and rectification of register of charges	
005856 - 010339	Chairman Administration	Clause 38 - Statement that company has only one member	
010340 - 010746	ALA7 Administration Chairman	Rationale for imposing an additional requirement on company to enter a statement in the company's register to show that the company had	

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		only one member or had ceased to have only one member and the need to define the date of occurrence of such event	
010747 - 011411	Ms Miriam LAU Chairman Administration	Justification for proposed section 95A and requirement for filing with R of C when the number of members fell to one or increase from one to two or more	The Administration to re-examine the justifications for proposed section 95A and the consequences for non-compliance.
011412 - 011440	Ms Emily LAU Administration Chairman Mr Eric LI	Penalty for non-compliance of section 95A	To enhance transparency in corporate governance, consideration should be given to requiring companies to file with R of C when the number of members fell to one or increased from one to two or more, and there was a transfer of shares
011441 - 011733	Ms Miriam LAU Administration Chairman ALA7	Need for R of C to be notified when there was a transfer of shares	
011734 - 011931	Chairman Administration	Clause 42 - Quorum where company has only one member	
011932 - 012034	Chairman Administration	Clause 43 - Circulation of members' resolutions	
012035 - 012209	Administration	Clause 44 - Written record where company has only one member	The Administration to review the drafting of clause 44 taking into account deputations' views
012210 - 012636	Chairman Administration Ms Emily LAU	Clause 53 - Directors of companies other than private companies	

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012637 - 012712	Ms Emily LAU Administration	Tendency for companies to reduce their number of directors to one after enactment of Bill	
012713 - 013102	Mr Eric LI Chairman Administration	Liability of officers of the company under section 153A(3)	
013103 - 013522	Mr Eric LI Ms Emily LAU Chairman Administration	Practical difficulties to put the number of directors back from zero to one within two months	The Administration to review the drafting of proposed section 153(A)(3) to take into account the situations where the company or any officer of the company would have practical difficulties to put the number of directors back from zero to one within two months. These might include the failure to convene a general meeting to appoint a new director after the death of the single director as the representative of the deceased director would take time to apply for probate
013523 - 014010	ALA7 Chairman Ms Emily LAU Mr Eric LI Administration	Whether the company could be wound up by the court upon the demise of the sole director under proposed section 177(1)(c)	



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014011 - 014529	Ms Miriam LAU Administration ALA7	Reference made to experience in the United Kingdom in dealing with succession matters upon the death of sole director of one-person companies	
014530 - 014657	Ms Miriam LAU Chairman Mr Eric LI	Problem of continuation of company's business upon death of sole director of one-person companies	
014658 - 015213	Mr Eric LI Chairman Ms Miriam LAU	Need to provide for a mechanism under which company should operate upon death of sole director of one-person companies	
015214 - 015230	Chairman Mr Eric LI Ms Miriam LAU	Liability of officers in carrying out basic business of company after the death of the sole director	The Administration to advise whether the company or any officer of the company would be held liable for carrying on basic business, such as payment of rent and renewal of licences, after the death of the single director
015231 - 015606	Administration Chairman Mr Eric LI	Clause 54 - Directors vicariously liable for acts of alternates	
015607 - 015653	Administration Chairman	Clause 55 - Written record of decision of sole director of private company	

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