

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 378/02-03  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/6/01/2

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

**Minutes of seventh meeting**  
**held on Monday, 18 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)  
Dr Hon David CHU Yu-lin, JP  
Hon NG Leung-sing, JP  
Hon CHAN Kwok-keung  
Hon CHAN Kam-lam, JP  
Hon Miriam LAU Kin-ye, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon Eric LI Ka-cheung, JP  
Hon SIN Chung-kai  
Hon Emily LAU Wai-hing, JP  
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. Meeting with the Administration**

- LC Paper No. CB(1) 303/02-03(01) -- Administration's responses to Legal Service Division's letters dated 9 October and 1 November 2002 issued under LC Paper Nos. CB(1) 42/02-03(04) and CB(1) 212/02-03(01) respectively
- LC Paper No. CB(1) 303/02-03(02) -- Legal Service Division's letter dated 14 November 2002 to the Administration
- LC Paper No. CB(1) 303/02-03(03) -- List of follow-up actions arising from the discussion on 11 November 2002
- LC Paper No. CB(1) 303/02-03(04) -- Administration's response to the list of follow-up actions arising from the discussion on 6 November 2002

2. The Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Administration was requested to -
  - (a) consider making it clear that the term “directors” in the definition of “shadow director” referred to the whole board of directors of a company;
  - (b) illustrate with examples how the phrase “are accustomed to act” under the definition of “shadow director” should apply;
  - (c) compare the proposed amendment with the law on governance of shadow directors, including the requirements for filing particulars of and disclosure of loans made to shadow directors, in the United Kingdom (UK), Australia, Singapore and Malaysia, in particular whether there was the same requirement in relation to public or private companies;
  - (d) provide a paper to address the concerns on clauses 58, 59 and 60 regarding “credit transaction” and “quasi loan” raised by the Assistant Legal Adviser 7 in her letters dated 9 October, 1 and 14 November 2002 to the Administration. The paper should also explain -
    - (i) the propriety of the transaction limit of \$500,000 under proposed section 157HA(8) and whether such a limit was subject to proposed section 157HA(2);
    - (ii) the rationale for extending the control on quasi loans and credit transactions to private companies which were excluded from the UK Companies Act 1985.
4. There being no other business, the meeting ended at 10:30 am.

**Proceedings of the meeting of the  
Bills Committee on Companies (Amendment) Bill 2002  
Meeting on Monday, 18 November 2002, at 8:30 am  
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 - 000152	Chairman	Opening remarks	
000153 - 001300	Administration Chairman	Administration's paper on shadow directors (LC Paper No. CB(1) 303/02-03(04))	
001301 - 001920	Mr NG Leung-sing Administration	Whether advisers of companies should be regarded as shadow directors	
001921 - 002021	Dr David CHU Administration	Whether the term "directors" in the definition of "shadow director" referred to the whole board of directors of a company	The Administration to consider making it clear that the term "directors" in the definition of "shadow director" referred to the whole board of directors of a company
002022 - 003300	Ms Miriam LAU Chairman Administration	Whether de facto directors and those who appointed nominee directors should be regarded as directors/shadow directors	
003301 - 003417	Ms Miriam LAU Administration	Impact of the proposed definition of "shadow director"	
003418 - 003508	Ms Miriam LAU Chairman Administration	Concern over the setting up of overseas companies in order to obviate the need to register in Hong Kong after the Bill was passed	
003509 - 003847	Ms Miriam LAU Administration	Impact of proposed definition on foreign investors	

Time marker	Speaker	Subject(s)	Action required
003848 - 004027	Chairman Ms Miriam LAU	Overseas experience regarding governance of shadow directors	The Assistant Legal Adviser 7 to conduct research on overseas experience with regard to governance of shadow directors and how it compared with Hong Kong. The Administration to provide more information on how governance on shadow directors was applied in overseas jurisdictions
004028 - 004218	Chairman Administration	Whether a de facto director of a family-owned company fell within the scope of definition of “director” under section 2 of the Companies Ordinance, Cap 32 (CO)	
004219 - 004939	Ms Miriam LAU Chairman Administration	Statistics on companies with nominee directors	
004940 - 005041	Ms Miriam LAU Administration	Concern about the impact of the proposed definition of “shadow director” on a large number of companies in Hong Kong as they would have to disclose their shadow directors who wished to remain behind the scenes	
005042 - 005313	Ms Miriam LAU Administration Chairman	Compliance and enforcement of section 158, in particular of private companies	
005314 - 005707	Chairman	Whether a person would be regarded as a shadow director if he influenced 50% of the directors	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
005708 - 010325	Ms Miriam LAU Administration ALA7	How “majority of directors of the company are accustomed to act” under the definition of “shadow director” should apply	The Administration to illustrate with examples how the phrase “majority of directors of the company are accustomed to act” under the definition of “shadow director” should apply.
010326 - 010508	Chairman Administration	Administration’s response to deputation’ views at LC Paper No. CB(1) 251/02-03(02) - Clause 56 - Secretary	
010509 - 010609	Chairman Administration	Clause 57 - Removal of director	
010610 - 010944	Chairman Administration	Clause 58 - Prohibition of loans, etc to directors and other persons and excepted transactions	
010945 - 012707	Chairman Administration	Quasi loans and credit transactions	
012708 - 012924	ALA7 Chairman Administration	Scope of prohibition of loans under 157H	
012925 - 013151	ALA7 Administration Chairman	Need to define “conditional sales agreement” under the definition of credit transaction under section 157H(7)	
013152 - 013610	ALA7 Administration	“Conditional sales agreement” and “hire purchase agreement”	
013611 - 014020	Chairman Administration ALA7	Whether it was Government’s policy to prohibit a company from selling a property to its director if part of the purchase price was paid by installments and the balance of the	

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		purchase price was paid on completion and whether the provisions had adequately reflected the policy intent	
014021 - 014233	Administration	Policy intent of proposed section 157H	
014234 - 014457	Ms Miriam LAU ALA7 Administration	Concern over the confusion caused by the extension of prohibition under section 157H to cover quasi loans and credit transactions and the rationale for extending the prohibition to private companies, which were excluded from the United Kingdom (UK) Companies Act 1985	
014458 - 014621	ALA7 Administration	The extent of financial assistance which the Administration intended to prohibit	
014622 - 014807	Ms Miriam LAU Chairman Administration	Whether the proposed prohibition was tighter than UK	
014808 - 015108	Chairman Ms Miriam LAU	Validity of transactions which contravened section 157H	
015109 - 020449	ALA7 Administration Chairman	Concerns on clauses 58, 59 and 60 regarding “credit transaction” and “quasi loan” raised by ALA7 in her letters dated 9 October, 1 and 14 November 2002 to the Administration	The Administration to provide a paper to address the concerns on clauses 58, 59 and 60 regarding “credit transaction” and “quasi loan” raised by the Assistant Legal Adviser 7 in her letters dated 9 October, 1 and 14 November 2002 to the Administration. The paper should also explain -

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			<p>(a) the propriety of the transaction limit of \$500,000 under proposed section 157HA(8) and whether such a limit was subject to proposed section 157HA(2);</p> <p>(b) the rationale for extending the control on quasi loans and credit transactions to private companies which were excluded from the UK Companies Act 1985</p>
020450 - 020610	Ms Miriam LAU Chairman	Concern over the applicability of criminal liabilities under section 157J to private companies	

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