

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 541/02-03  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/6/01/2

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

**Minutes of ninth meeting**  
**held on Friday, 6 December 2002, at 10:45 am**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
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
- Members absent** : Dr Hon David CHU Yu-lin, JP  
Hon Albert HO Chun-yan
- 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) 448/02-03(01) -- List of follow-up actions arising from the discussion on 28 November 2002

LC Paper No. CB(1) 448/02-03(02) -- Administration's response to the lists of follow-up actions arising from the discussion on 11 and 18 November 2002)

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

3. The Administration was requested to -

- (a) consider the proposal of requiring a one-member company to file with the Registrar of Companies a statement in respect of its number of members falling to one or increasing from one to two or more;

- (b) advise whether there were provisions under the Companies Ordinance (Cap. 32) which allow the remaining officers viz the Secretary or the Manager of a one-member company to convene a general meeting to appoint a new director upon the death of the sole member of the company. To consider extending the two-month period under new section 153A(4);
- (c) review the practicality of section 158, which required companies to keep a register of their shadow directors, in conjunction with new section 161B, which held auditors liable for failure to include in their reports loans to shadow directors whom they had no knowledge of;
- (d) explain the difference between new section 162B and its equivalent in the UK Companies Act 1985, for example, why the former included holding companies;
- (e) provide the minutes of meetings of the Standing Committee on Company Law Reform regarding the decision to exclude the provision of indemnities to officers and auditors for liability incurred by them to a third party under new section 165(1); and
- (f) review new section 165(3)(b). The proposal to insure auditors against any liability to the company might give rise to conflict of interest on the independent role of auditors as some auditors might tend to relax accounting standards to suit the need of the companies.

## **II Date of next meeting**

4. Members agreed that the tenth and eleventh meetings would be held on 9 and 23 January 2003 respectively.

*(Post meeting note: With the concurrence of the Chairman, the twelfth and thirteenth meetings had been scheduled for 20 and 27 February 2003 respectively.)*

5. There being no other business, the meeting ended at 1:00 pm.

**Proceedings of the meeting of the  
Bills Committee on Companies (Amendment) Bill 2002  
Meeting on Friday, 6 December 2002, at 10:45 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 – 000624	Chairman Ms Emily LAU Mr SIN Chung-kai	Date of next meeting	
000625 – 000731	Administration	Administration's response to the list of follow-up actions arising from the discussion on 11 and 18 November 2002 (LC Paper No. CB(1) 448/02-03(02))	
000732 – 000939	Chairman Administration	Scope of manager and new section 83(2)	
000940 – 003252	Chairman Administration ALA7 Ms Emily LAU Mr CHAN Kam-lam Mr SIN Chung-kai	Justifications for new section 95A	The Administration to consider the proposal of requiring a one-member company to file with the Registrar of Companies a statement in respect of its number of members falling to one or increasing from one to two or more
003253 – 004021	Chairman Administration	New section 153(A)(3) and death of the sole member and director	
004022 – 004519	Mr CHAN Kwok-keung Administration Mr Eric LI Chairman	Arrangements in the event that the sole member and director of company became mentally incapable	

Time marker	Speaker	Subject(s)	Action required
004520 –005355	Mr Eric LI Administration Chairman ALA7	Provisions which allowed for the advance appointment of a person to carry out functions upon death of sole member and director of company; liability of every officer of the company under section 153A(3) for non-compliance with section 153A(1); mechanism to ensure that the memorandum and articles of association were suitably amended to provide for appointment of persons to carry out functions in the event of death of sole director of one-member companies; and need to extend the two-month period under new section 153(A)(4)	The Administration to advise whether there were provisions under the Companies Ordinance (Cap. 32) which allow the remaining officers viz the Secretary or the Manager of a one-member company to convene a general meeting to appoint a new director upon the death of the sole member of the company. To consider extending the two-month period under new section 153A(4)
005356 –005938	Administration Mr Eric LI Chairman	How accountants dealt with problems associated with one-member companies	
005939 – 005956	Chairman Administration	Whether the appointment of person to carry out functions of the company applied only to one-member companies	
005957 –010647	Administration Chairman	Shadow directors and the comparison between Hong Kong and the United Kingdom, Australia, Malaysia and Singapore on 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
010648 – 011245	Ms Emily LAU Administration	Concept of shadow directors	

Time marker	Speaker	Subject(s)	Action required
011246 – 011618	Mr Eric LI	Concern about liability imposed on accountants and auditors for failure to report on loans to shadow directors whom they had no knowledge of	
011619 – 012104	Chairman Administration Mr Henry WU	Concern about absurdity of law in requiring registration of shadow directors knowing that enforcement would unlikely be taken except on complaints	The Administration to review the practicality of section 158, which required companies to keep a register of their shadow directors, in conjunction with new section 161B, which held auditors liable for failure to include in their reports loans to shadow directors whom they had no knowledge of
012105 – 012246	Ms Emily LAU	Vagueness in concept of shadow directors	
012247 – 012609	Administration	Need for provisions to require registration of shadow directors	
012610 – 013059	Mr Eric LI Administration	Liability imposed on auditors for failure to report loans made to shadow directors	
013100 – 013253	Chairman	Administration's response to summary of concerns raised by deputations at LC Paper No. CB(1) 251/02-03(02) Clause 63 - Particulars in accounts of loans to directors	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
013254 – 013320	Mr Eric LI Administration	Inability for auditors to report loans made to shadow directors under new section 161B(9) when they had no knowledge of such	
013321 –014113	Mr Eric LI Chairman Administration	Need to retain section 158 on the requirement for companies to disclose shadow directors if auditors were required under new section 161B(9) to report loans made to shadow directors	
014114 –014412	Chairman Administration	Clause 65 - Contracts with sole member and director	
014413 –014514	ALA7	Difference between new section 162B and its equivalent in the United Kingdom (UK) Companies Act 1985	The Administration to explain the difference between new section 162B and its equivalent in the UK Companies Act 1985
014515 –015008	Administration Chairman	Clause 66 - Provisions as to liability of officers and auditors	
015009 – 015311	ALA7 Administration Chairman	Provision of indemnities to officers and auditors incurred by them to third parties	
015312 –020239	Administration	Reference to recommendation of the Standing Committee on Company Law Reform on the provision of indemnities to officers and auditors incurred by them to third parties	The Administration to provide the minutes of meetings of the Standing Committee on Company Law Reform regarding the decision to exclude the provision of indemnities to officers and auditors for liability incurred by them to a third party

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
			under new section 165(1)
020240 –020335	ALA7 Administration	Comparison made between new section 165 and its equivalent in the UK Companies Act 1985	
020336 –020817	Mr Eric LI Administration	New section 165(3)(b)	The Administration to review new section 165(3)(b). The proposal to insure auditors against any liability to the company might give rise to conflict of interest on the independent role of auditors as some auditors might tend to relax accounting standards to suit the need of the companies
020818 –021040	Ms Miriam LAU Administration Mr Eric LI Chairman	Cost implications of companies for indemnifying their officers and auditors under new section 165	

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

Council Business Division 1  
Legislative Council Secretariat  
 18 December 2002