

**立法會**  
**Legislative Council**

LC Paper No. CB(1)939/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/04

**Bills Committee on Companies (Amendment) Bill 2004**

**Minutes of the fourth meeting held on  
Thursday, 3 February 2005, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon CHIM Pui-chung
- Public officers attending** : Miss Emma LAU  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)
- Mr Alan LO  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)
- Mr Jackie LIU  
Assistant Secretary for Financial Services and the Treasury  
(Financial Services)

Mr K F CHENG  
Senior Assistant Law Draftsman  
Department of Justice

**Attendance by invitation** : Hong Kong Institute of Certified Public Accountants

Mr Roger BEST  
Immediate Past President

Mr Paul F Winkelmann  
Chairman, Financial Accounting Standards Committee

Ms Elsa HO  
Assistant Director (Financial Reporting)

**Clerk in attendance** : Miss Salumi CHAN  
Chief Council Secretary (1)5

**Staff in attendance** : Miss Mona LAI  
Assistant Legal Adviser 7

Ms Connie SZETO  
Senior Council Secretary (1)4

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**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)826/04-05 — Minutes of third meeting held  
on 13 January 2005)

The minutes of the meeting held on 13 January 2005 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(1)825/04-05(01))

— “Follow-up to the third meeting on 13 January 2005” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)825/04-05(02)

— Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 13 January 2005”

LC Paper No. CB(1)843/04-05(01)

— Sample Consolidated Financial Statements provided by the Hong Kong Institute of Certified Public Accountants

LC Paper No. CB(1)162/04-05(02)

— Letter dated 1 November 2004 from the Assistant Legal Adviser to the Administration

LC Paper No. CB(1)453/04-05(17)

— Reply dated 23 November 2004 from the Administration to the Assistant Legal Adviser

LC Paper No. CB(1)668/04-05(04)

— Letter dated 24 December 2004 from the Assistant Legal Adviser to the Administration

LC Paper No. CB(1)825/04-05(03)

— Reply dated 27 January 2005 from the Administration to the Assistant Legal Adviser

LC Paper No. CB(1)853/04-05(01)

— Letter dated 2 February 2005 from the Assistant Legal Adviser to the Administration)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Admin

3. At the request of the Bills Committee, the Administration agreed to take the following actions:

(a) Determination of parent and subsidiary relationship between entities

- (i) The Administration had undertaken to move a Committee Stage amendment (CSA) to the definition of “undertaking” in section 1(1) of the proposed Twenty-third Schedule to the Companies Ordinance (CO) (proposed 23<sup>rd</sup> Schedule) to reflect the policy intent that the definition did not cover “an individual” (paragraph 9 of LC Paper No. CB(1)825/04-05(02)).
- (ii) The Administration had undertaken to move a CSA to recast the drafting of section 2(3) of the proposed 23<sup>rd</sup> Schedule to reflect the policy intent that the subsection was to cater for a “grandparent-parent-subsidiary” situation (paragraph 11 of LC Paper No. CB(1)825/04-05(02)).
- (iii) According to paragraph 3 of the Administration’s reply dated 27 January 2005 to the Assistant Legal Adviser (LC Paper No. CB(1)825/04-05(03)), it was hypothetically possible under section 2(1) of the proposed 23<sup>rd</sup> Schedule that more than one undertaking could satisfy the various criteria under which an undertaking was defined to be a parent undertaking in relation to another undertaking (i.e. subsidiary undertaking). The Administration was requested -
- to clarify the obligation of these parent undertakings under the CO in preparing group accounts; and
  - to consider the need for setting out clearly in the Bill provisions dealing with the occurrence of the above hypothetical possibility, and to provide information on whether similar provisions were contained in relevant legislation of other jurisdictions.
- (iv) To address the points of concern raised by members on section 3(3) of the proposed 23<sup>rd</sup> Schedule at the third and fourth meetings, the Administration had undertaken to research into the intent and application of paragraph 10 of Schedule 10A of the UK Companies Act 1985 on which section 3(3) was modelled. The Administration was requested to clarify the purpose(s) to be achieved by section 3(3) and to respond to the points of concern set out in item 1(e) of the list of follow-up actions to the third meeting (LC Paper No. CB(1)825/04-05(01)).

(b) Proposed “true and fair view override” provisions

To address members’ concern about the difficulty for company directors to apply the proposed “true and fair view override” provisions and that directors who failed to comply with the provisions would be subject to criminal sanction under section 124(3) of the CO, the Administration

had undertaken to take the following actions and report the outcome to the Bills Committee:

- (i) To discuss with the Hong Kong Institute of Certified Public Accountants on how the proposed provisions could be improved; and
- (ii) To review, in consultation with the Department of Justice, the liability provision (i.e. section 124(3) of the CO) relating to non-compliance with the requirement to give a “true and fair view” of the state of affairs and profit and loss of the company in the accounts or group accounts.

Date of next meeting

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 24 February 2005, at 8:30 am to discuss with organizations and academics on the impact of the Bill on the development of asset-securitization market in Hong Kong.

**III. Any other business**

5. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1  
Legislative Council Secretariat  
23 February 2005

**Proceedings of the fourth meeting of the  
Bills Committee on Companies (Amendment) Bill 2004  
on Thursday, 3 February 2005, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000208	Chairman	Confirmation of minutes of meeting on 13 January 2005	
000209-003542	Administration Mr Ronny TONG Chairman Hong Kong Institute of Certified public Accountants (HKICPA)	<p><u>Matters relating to the proposed Twenty-third Schedule to the Companies Ordinance (CO) (proposed 23<sup>rd</sup> Schedule)</u> (Paragraphs 1 – 8 and 12 of LC Paper No. CB(1)825/04-05(02))</p> <p>(a) Administration’s briefing on the operation of the “dominant influence test” under various possible scenarios</p> <p>(b) Member’s concern that the policy intent and application of section 3(3) of the proposed 23<sup>rd</sup> Schedule were unclear</p> <p>(c) Administration’s undertaking to research into the intent and application of paragraph 10 of Schedule 10A of the UK Companies Act 1985 on which section 3(3) of the proposed 23<sup>rd</sup> Schedule was modelled</p> <p>(d) Request for the Administration</p> <p>-</p> <p>(i) to clarify the purpose(s) to</p>	<p>Administration to take follow-up action under paragraph 3(a)(iv) of the minutes</p> <p>Administration to take follow-up action under paragraph 3(a)(iv)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>be achieved by section 3(3); and</p> <p>(ii) to respond to the points of concern set out in item 1(e) of the list of follow-up actions to the third meeting (LC Paper No. CB(1)825/04-05(01))</p> <p><u>Sample consolidated financial statements</u> (LC Paper No. CB(1)843/04-05(01))</p> <p>HKICPA’s briefing on the sample consolidated financial statements in a “grandparent-parent-subsidiary” situation where the grandparent undertaking (Company A) owned a partnership (Partnership B) which held certain share capital of the grandparent undertaking and in turn was the parent undertaking of another undertaking (Company C)</p>	of the minutes
003543-004635	<p>Chairman Assistant Legal Adviser 7 (ALA7) Mr Ronny TONG</p>	<p><u>Application of section 3(3) of the proposed 23<sup>rd</sup> Schedule</u> (LC Paper No. CB(1)853/04-05(01))</p> <p>Concern about the policy intent and application of section 3(3) of the proposed 23<sup>rd</sup> Schedule</p>	
004636-010138	<p>Administration Ms Miriam LAU HKICPA Chairman Mr Ronny TONG</p>	<p><u>Definition of “undertaking” in section 1(1) of the proposed 23<sup>rd</sup> Schedule</u> (Paragraph 9 of LC Paper No. CB(1)825/04-05(02))</p> <p>(a) Administration’s proposed Committee Stage amendment</p>	Administration to take action under

Time marker	Speaker	Subject(s)	Action Required
		<p>(CSA) to the definition of “undertaking” in section 1(1) of the proposed 23<sup>rd</sup> Schedule to reflect the policy intent that the definition did not cover “an individual”</p> <p>(b) Administration’s and HKICPA’s advice that “unincorporated association” in the proposed CSA would include cooperatives and trust arrangements</p> <p>(c) Members’ support for the proposed CSA</p>	<p>paragraph 3(a)(i) of the minutes</p>
010139-014044	<p>Administration Mr Ronny TONG HKICPA Chairman ALA7</p>	<p><u>Section 2(1) of the proposed 23<sup>rd</sup> Schedule</u> (Paragraph 10 of LC Paper No. CB(1)825/04-05 (02) and paragraph 3 of LC Paper No. CB(1)825/04-05 (03))</p> <p>(a) Administration’s view that -</p> <p>(i) it was hypothetically possible for more than one undertaking to meet the criteria set out in section 2(1) of the proposed 23<sup>rd</sup> Schedule under which an undertaking was defined to be a parent undertaking in relation to another undertaking (i.e. subsidiary undertaking) but such possibility was remote in practice;</p> <p>(ii) such a hypothetical</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>possibility already existed under the existing section 2(4)(a) of the CO;</p> <p>(iii) it was not necessary to set out in the law to deal with the occurrence of such a hypothetical possibility; and</p> <p>(iv) should the hypothetical possibility in item (i) above occurred, the concerned parent undertakings were required to prepare group accounts</p> <p>(b) The Chairman's request for the Administration -</p> <p>(i) to clarify the obligation of concerned parent undertakings to prepare group accounts under the CO; and</p> <p>(ii) to consider the need for setting out clearly in the Bill provisions dealing with the occurrence of the hypothetical possibility in item (a)(i) above</p> <p>(c) Administration's undertaking to take follow-up action and provide information about whether there were similar provisions in relevant legislation of other jurisdictions</p>	<p>Administration to take action under paragraph 3(a)(iii) of the minutes</p> <p>Administration to take action under paragraph 3(a)(iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p><u>Preparation of group accounts in a “joint control” situation</u></p> <p>HKICPA’s advice that an undertaking having a “joint control” together with others over a jointly controlled entity was not required to prepare group accounts, but its interests in the jointly controlled entity were accounted for by proportionate consolidation or equity accounting methods under Hong Kong Accounting Standard 31</p>	
014045-014125	Chairman ALA7	<p><u>Section 2(3) of the proposed 23<sup>rd</sup> Schedule</u> (Paragraph 11 of LC Paper CB(1)825/04-05(02))</p> <p>(a) Administration’s proposed CSA to recast the drafting of section 2(3) of the proposed 23<sup>rd</sup> Schedule to reflect the policy intent that the subsection was to cater for a “grandparent-parent-subsidiary” situation</p> <p>(b) Members’ support for the proposed CSA</p>	Administration to take action under paragraph 3(a)(ii) of the minutes
014126-014148	Chairman	<p><u>Impact of the Bill on the asset securitization market in Hong Kong</u> (Paragraph 13 of LC Paper CB(1)825/04-05(02))</p> <p>Members noted that the Administration was collating relevant information to facilitate the Bills Committee’s discussion with</p>	

Time marker	Speaker	Subject(s)	Action Required
		organizations and academics of the subject at the fifth meeting to be held on 24 February 2005	
014149-020418	Chairman Administration Mr Ronny TONG HKICPA Ms Miriam LAU	<p><u>Consequential amendments to section 128 of the CO</u> (Paragraphs 14 and 15 of LC Paper CB(1)825/04-05(02))</p> <p>(a) Administration’s explanation on the policy intent for introducing the proposed “true and fair view override” provisions as new sections 126(4) and 126(5) of the CO in relation to the preparation of group accounts</p> <p>(b) Member’s concern about the difficulty for company directors to apply the proposed “true and fair view override” provisions and that directors who failed to comply with the provisions would be subject to criminal sanction under section 124(3) of the CO</p> <p>(c) Administration’s undertaking to take the following actions and report the outcome to the Bills Committee-</p> <p>(i) To discuss with HKICPA on how the proposed “true and fair view override” provisions could be improved; and</p> <p>(ii) To review, in consultation with the Department of Justice, the liability</p>	Administration to take action under paragraph 3(b) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		provision (i.e. section 124(3) of the CO) relating to non-compliance with the requirement to give a “true and fair view” of the state of affairs and profit and loss of the company in the accounts or group accounts	
020419-020548	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
23 February 2005