

立法會
Legislative Council

LC Paper No. CB(1)1206/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/04

Bills Committee on Companies (Amendment) Bill 2004

**Minutes of the sixth meeting held on
Tuesday, 15 March 2005, at 10:45 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
Dr Hon LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon TAM Heung-man
- Member absent** : Hon WONG Ting-kwong, BBS
- 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 : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Ms Connie SZETO
Senior Council Secretary (1)4

I. Confirmation of minutes of meeting
(LC Paper No. CB(1)1076/04-05 — Minutes of fifth meeting held on
24 February 2005)

The minutes of the meeting held on 24 February 2005 were confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)938/04-05(09) — Paper provided by the Administration on “Impact of the Bill on the asset-securitization market in Hong Kong”
- LC Paper No. CB(1)1077/04-05(01) — “Follow-up to the fourth meeting on 3 February 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1077/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 3 February 2005”
- 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”)

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

Follow-up actions to be taken by the Administration

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

Admin

- (a) Determination of parent and subsidiary relationship between entities
To facilitate members’ understanding of the provisions in section 3(3) of the proposed Twenty-third Schedule (23rd Schedule) to the Companies Ordinance (CO) and their consideration of the Administration’s proposal of removing the subsection, the Administration was requested to take the following actions -
- (i) To provide copies of the following relevant provisions quoted by the Administration -
- Paragraph 10 of Schedule 10A to the UK Companies Act 1985 (the UK Act) on which section 3(3) of the proposed 23rd Schedule was modelled;
 - Sections 146 and 162C of the UK Act; and
 - Sections 49A and 49B of the CO.

- (ii) To provide a paper addressing the following concerns raised by members -
- The original purpose(s) to be achieved by section 3(3) of the proposed 23rd Schedule;
 - Whether the word “held” in section 3(3) referred to “directly held” and/or “indirectly held”;
 - Whether section 3(3) was applicable to the following scenarios -
 - A parent undertaking (“A”) had two fully-owned subsidiary undertakings (“B” which was a body corporate and “C” which was not a body corporate). Both “B” and “C” held certain shares and voting rights of “A”;
 - A parent undertaking (“A”) had two partially-owned subsidiary undertakings (“D” which was a body corporate and “E” which was not a body corporate). Both “D” and “E” held certain shares and voting rights of “A”;
 - In a situation where a company (“A”) invested in a fund, which held shares in another company (“B”), which in turn held shares in “A”, to explain with the relevant provisions and/or accounting rules:
 - How the parent and subsidiary relationship between the entities was determined;
 - How the group accounts of the entities were prepared;
 - Whether section 3(3) was applicable;
 - The justifications for the Administration’s current proposal of removing section 3(3); and
 - How a parent company should deal with shares of itself held, not directly by the company, but through a subsidiary company.

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

To address members’ concerns relating to the proposed “true and fair view override” provisions in the Bill, the Administration was requested to take the following actions -

- (i) To explain the purpose(s) of the proposed subsection (4) of section 123;
- (ii) To review subsections (1), (2), (3), (4) and (4A) of section 123 to address members’ concern that there was overlap between the existing and proposed provisions (e.g. between the existing subsection (1) and the proposed subsection (4), and between the existing subsection (3) and the proposed subsection (4)) and

consider how the situation should be rectified (e.g. to delete subsection (3)); and

- (iii) To provide copies of section 227A and other relevant provisions in the UK Act on which the “true and fair view override” provisions in the Bill were modelled.

(c) Meeting arrangements

To facilitate discussion of the Bills Committee, the Administration was requested to take the following actions -

- (i) To provide the relevant provisions in the CO and accounting rules, and relevant legislation and accounting rules of other jurisdictions in footnotes or annexes to papers to be submitted to the Bills Committee in future; and
- (ii) To invite Government’s legal advisers on company laws to attend meetings of the Bills Committee.

Date of next meeting

- 4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 7 April 2005, at 8:30 am.

III. Any other business

- 5. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
4 April 2005

**Proceedings of the sixth meeting of the
Bills Committee on Companies (Amendment) Bill 2004
on Tuesday, 15 March 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000240	Chairman	Confirmation of minutes of meeting on 24 February 2005	
000241-000659	Administration	<p><u>Comparison of the relevant provisions in Hong Kong, United Kingdom (UK), Australia, Singapore, and the United States</u> (Annex to LC Paper No. CB(1)938/04-05(09))</p> <p>Briefing by the Administration on the information</p>	
000700-000957	Chairman Administration	<p><u>Committee Stage amendments (CSAs) to sections 1(1) and 2(3) of the proposed Twenty-third Schedule to the Companies Ordinance (CO)</u> (proposed 23rd Schedule) (Paragraphs 9 and 11 of LC Paper No. CB(1)825/04-05(02), paragraph 2 of LC Paper No. CB(1)1077/04-05(02))</p> <p>The Administration's undertaking to present draft proposed CSAs when the Bills Committee scrutinized the relevant provisions of the Bill</p>	

Time marker	Speaker	Subject(s)	Action Required
000958-001345	Chairman Administration	<p><u>The situation where more than one undertaking satisfied the various criteria under which an undertaking was defined to be a parent undertaking in relation to a subsidiary undertaking</u> (paragraphs 3 and 4 of LC Paper No. CB(1)1077/04-05(02))</p> <p>The Administration's advice that -</p> <p>(a) it was hypothetically possible under the existing section 2(4)(a) of the CO that more than one company could be the parent company of a subsidiary;</p> <p>(b) all the companies satisfying the criteria as set out in section 2(4)(a) of the CO as parent companies would have to prepare group accounts under section 124(1) of the CO; and</p> <p>(c) it was unnecessary for the Bill to contain an express provision to deal with the situation in (b) above</p>	
001346-001854	Administration	<p><u>Section 3(3) of the proposed 23rd Schedule - reduction of voting rights in undertaking</u> (Paragraphs 5 to 8 of LC Paper No. CB(1)1077/04-05(02))</p> <p>The Administration's advice that -</p> <p>(a) paragraph 10 of Schedule 10A to the UK Companies Act 1985 (the UK Act), on which section 3(3) of the proposed 23rd</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Schedule was modelled, should be read as applying to voting rights in an undertaking held by the same undertaking itself;</p> <p>(b) sections 146 and 162C of the UK Act allowed certain UK companies to acquire and hold under certain circumstances their own shares. In Hong Kong, a company (i.e. a body corporate) could not be a member of itself except where statute otherwise provided. Even sections 49A and 49B of the CO permitted a company to redeem or purchase its own shares, such shares had to be cancelled on redemption or purchase. Consequently, voting rights in respect of these shares would be extinguished;</p> <p>(c) the Administration was not aware of any real life situation where a subsidiary undertaking which was not a body corporate held voting rights in the same undertaking itself;</p> <p>(d) the existing tests of determining parent and subsidiary relationship of two companies under section 2(4) to (7) of the CO did not contain a reduction rule of voting rights equivalent to section 3(3) of the proposed 23rd Schedule;</p> <p>(e) section 3(3) of the proposed</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>23rd Schedule appeared to have little relevance in Hong Kong; and</p> <p>(f) in view of the considerations in (a) to (e) above, the Administration proposed to remove section 3(3) from the proposed 23rd Schedule</p>	
001855-002205	Chairman Administration	Why the Administration had included section 3(3) of the proposed 23 rd Schedule in the Bill	
002206-002834	Mr Ronny TONG Chairman Administration	<p>(a) Request for the Administration -</p> <p>(i) to provide copies of paragraph 10 of Schedule 10A, sections 146 and 162C of the UK Act, and sections 49A and 49B of the CO; and</p> <p>(ii) to provide the relevant provisions in the CO and accounting rules, and relevant legislation and accounting rules of other jurisdictions in footnotes or annexes to papers to be submitted to the Bills Committee in future</p>	<p>Administration to take action under paragraph 3(a)(i) of the minutes</p> <p>Administration to take action under paragraph 3(c)(i)</p>
002835-003108	Mr Ronny TONG Administration	<p>Whether section 3(3) of the proposed 23rd Schedule was applicable to the following scenarios:</p> <p>(a) A parent undertaking (“A”) had two fully-owned subsidiary</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>undertakings (“B” which was a body corporate and “C” which was not a body corporate). Both “B” and “C” held certain shares and voting rights of “A”;</p> <p>(b) A parent undertaking (“A”) had two partially-owned subsidiary undertakings (“D” which was a body corporate and “E” which was not a body corporate). Both “D” and “E” held certain shares and voting rights of “A”;</p>	
003109-003220	Mr Albert HO Administration Chairman	Request for the Administration to invite Government’s legal advisers on company laws to attend meetings of the Bills Committee	Administration to take action under paragraph 3(c)(ii) of the minutes
003221-004711	Mr Albert HO Chairman Hong Kong Institute of Certified Public Accountants (HKICPA) Mr Ronny TONG Administration	<p>(a) Voting right held by nominee companies</p> <p>(b) Determination of parent and subsidiary relationship in a situation where a company (“A”) invested in a fund, which held shares in another company (“B”), which in turn held shares in “A”, i.e. shares of “B” were indirectly held by “A”</p> <p>(c) How a parent company should deal with shares of itself held, not directly by the company, but through a subsidiary company</p>	
004712-005128	Chairman Administration HKICPA	<u>Determination of parent and subsidiary relationship between entities</u>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) The Administration’s advice that the existing tests of determining parent and subsidiary relationship between entities were given in sections 2(4) to (7) of the CO</p> <p>(b) HKICPA’s advice that the requirements of consolidation of accounts were provided in the Hong Kong Accounting Standards</p>	
005129-010555	<p>HKICPA Mr Ronny TONG Chairman Administration</p>	<p>(a) Justifications for the Administration’s proposal to remove section 3(3) from the proposed 23rd Schedule</p> <p>(b) The Administration’s undertaking to provide a paper addressing the following concerns raised by members -</p> <p>(i) The original purpose(s) to be achieved by section 3(3) of the proposed 23rd Schedule;</p> <p>(ii) Whether the word “held” in section 3(3) refers to “directly held” and/or “indirectly held”;</p> <p>(iii) Whether section 3(3) was applicable to the following scenarios:</p> <ul style="list-style-type: none"> ● A parent undertaking (“A”) had two fully-owned subsidiary 	<p>Administration to take action under paragraph 3(a)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>undertakings (“B” which was a body corporate and “C” which was not a body corporate). Both “B” and “C” held certain shares and voting rights of “A”;</p> <ul style="list-style-type: none"> ● A parent undertaking (“A”) had two partially-owned subsidiary undertakings (“D” which was a body corporate and “E” which was not a body corporate). Both “D” and “E” held certain shares and voting rights of “A”; <p>(iv) In a situation where a company (“A”) invested in a fund, which held shares in another company (“B”), which in turn held shares in “A”, to explain with the relevant provisions and/or accounting rules:</p> <ul style="list-style-type: none"> ● How the parent and subsidiary relationship between the entities was determined; ● How the group accounts of the entities were prepared; ● Whether section 3(3) was applicable; <p>(v) The justifications for the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Administration's current proposal of removing section 3(3); and</p> <p>(vi) How a parent company should deal with shares of itself held, not directly by the company, but through a subsidiary company.</p>	
010556-011252	Administration Chairman	<p><u>Proposed "true and fair view override" provisions</u> (Paragraphs 14 to 19 of LC Paper No. CB(1)825/04-05(02), paragraphs 9 to 12 of LC Paper No. CB(1)1077/04-05(02))</p> <p>Administration's briefing on the written response</p>	
011253-011920	Mr Ronny TONG Chairman Administration	<p>(a) Request for the Administration to provide copies of section 227A and other relevant provisions in the UK Act on which the "true and fair view override" provisions in the Bill were modelled</p> <p>(b) Whether it was necessary to provide the proposed subsection (4) and the new subsection (4A) of section 123 of the CO</p> <p>(c) The Administration's advice that -</p> <p>(i) the proposed subsection (4) was to expressly require company's accounts to give a true and fair view of</p>	Administration to take action under paragraph 3(b)(iii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>the state of affairs or the profit or loss of the company, and to contain additional information where compliance with the requirements of Tenth Schedule and other requirements of the CO as to matters to be included in a company's accounts would not be sufficient to give a true and fair view; and</p> <p>(ii) the new subsection (4A) was to allow directors of the company to depart from the Tenth Schedule and other requirements of the CO as to the matters to be included in a company's accounts where compliance with these provisions was inconsistent with the requirement to give a true and fair view as required under subsection (1)</p>	
011921-012816	Mr Ronny TONG Administration Ms Miriam LAU	Whether it was necessary to provide the proposed subsection (4) of section 123	
012817-014525	Mr Ronny TONG Administration Ms Miriam LAU Chairman	<p>(a) Members' concern that -</p> <p>(i) the proposed subsection (4) of section 123 would overlap with the overriding provision in subsection (1) which required a company's accounts to give a true and fair view of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the state of affairs and profit and loss of the company; and</p> <p>(ii) there would be confusion when the proposed subsection (4) was read together with subsections (1), (2) and (3)</p>	
014526-015347	Chairman Administration Mr Ronny TONG	<p>Request for the Administration to take the following actions:</p> <p>(a) To explain the purpose(s) of the proposed subsection (4) of section 123;</p> <p>(b) To review subsections (1), (2), (3), (4) and (4A) of section 123 to address members' concern that there is overlap between the existing and proposed provisions (e.g. between the existing subsection (1) and the proposed subsection (4), and between the existing subsection (3) and the proposed subsection (4)) and consider how the situation should be rectified (e.g. to delete subsection (3)); and</p> <p>(c) To provide copies of sections 227A and other relevant provisions in the UK Act on which the "true and fair view override" provisions in the Bill were modelled</p>	Administration to take action under paragraph 3(b)(i), (ii) and (iii) of the minutes
015348-020120	Senior Assistant Legal Adviser 2	Whether more than one undertaking could be the parent undertaking of a	

Time marker	Speaker	Subject(s)	Action Required
	Administration Mr Ronny TONG	subsidiary undertaking	
020121-020155	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
4 April 2005