

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1337/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/04

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

**Minutes of the seventh meeting held on  
Thursday, 7 April 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 Albert HO Chun-yan  
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 TAM Heung-man
- Members absent** : Dr Hon LUI Ming-wah, JP  
Hon CHAN Kam-lam, JP  
Hon WONG Ting-kwong, BBS  
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

Ms Beverly YAN  
Senior Government Counsel  
Department of Justice

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

Mr Roger BEST  
Immediate Past President

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)1206/04-05 — Minutes of sixth meeting held  
on 15 March 2005)

The minutes of the meeting held on 15 March 2005 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)1207/04-05(01) — “Follow-up to the fifth meeting on 24 February 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1207/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 24 February 2005”
- LC Paper No. CB(1)1113/04-05(01) — Submission dated 11 March 2005 from The Hong Kong Mortgage Corporation Limited
- LC Paper No. CB(1)1130/04-05(01) — Submission dated 16 March 2005 from Professor Kalok CHAN, Head and Professor of Department of Finance, Hong Kong University of Science and Technology
- LC Paper No. CB(1)1130/04-05(02) — Submission dated 17 March 2005 from Professor Raymond SO, Associate Professor, Director, M. Sc. Programme in Finance, The Chinese University of Hong Kong
- LC Paper No. CB(1)938/04-05(08) — Submission dated 18 February 2005 from Ms Ann Rutledge, a partner of R & R Consulting
- 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)668/04-05(03) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 16 December 2004”
- LC Paper No. CB(1)1207/04-05(03) — “Follow-up to the sixth meeting on 15 March 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1207/04-05(04) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 15 March 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

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

- (a) Impact of the Bill on the asset-securitization market in Hong Kong  
Given the grave concern expressed by the industry about the possible negative impact of the Bill on the development of the asset-securitization market in Hong Kong, the Administration was requested to re-assess the impact of the Bill in this regard. In this connection, the Administration was requested to take the following actions -
- (i) To provide the following information with relevant statistics -
- Existing size of the asset-securitization market in Hong Kong and its expected growth;
  - Existing role and contribution of the asset-securitization industry in promoting Hong Kong’s economy and maintaining Hong Kong’s status and competitiveness as an international financial centre; and
  - Impact of the Bill on the above two items.

- (ii) To respond to the following views about the impact of the Bill on the development of the asset-securitization market in Hong Kong -
- Hong Kong Mortgage Corporation Limited (HKMCL)'s submission dated 11 March 2005 (LC Paper No. CB(1)1113/04-05(01)) (paragraph 14)  
“...This would greatly reduce the incentives for securitization transactions, not only on the part of the transferor but also on the part of the third party service providers, since consolidation of the SPE might affect their financial ratios. Finally, the inability to offer any of the options would reduce the attractiveness of asset-backed securities to investors and require a higher yield to compensate, thereby increasing the cost of issuance to the transferor and further reducing the incentive for securitization.”
  - Professor Kalok CHAN's submission dated 16 March 2005 (LC Paper No. CB(1)1130/04-05(01)) (second last paragraph)  
“[I]n order for securitization SPEs not to fall within the proposed definition of “subsidiary”, the originator could choose not to provide any form of credit enhancement. However, this should make the securities issued by the SPEs less attractive and increase the required yield. I do not have data on how much this will increase the cost of issuing securitization notes. But obviously, this will reduce the incentives for securitization.”
  - The Hong Kong Capital Markets Association's submission dated 31 December 2004 (LC Paper No. CB(1)647/04-05(01)) (paragraph 4)  
“...on a comparative basis the market is still extremely small and utilized by only a limited number of issuers. Continued growth and expansion in the number of issuers will only be supported by the ability to achieve off balance sheet treatment for securitized assets, which the proposed amendments will unfortunately curtail.”
- (iii) To provide the justifications for the Administration's view that off-balance sheet treatment for securitization special purpose entities (SPEs) might result in “distortion of financial statements of the group as a whole to the extent that they do not show a true and fair view” (paragraph 7 of LC Paper No. CB(1)938/04-05(09)), and to clarify whether the current off-balance sheet treatment for securitization SPEs had failed to give a “true and fair view” of the company's group accounts.
- (iv) To provide information on the size of the asset-securitization markets in overseas jurisdictions, and the development and growth

of such markets after the adoption of the International Accounting Standard 27, if applicable.

- (v) To provide detailed response in respect of the overseas experience mentioned in various submissions received by the Bills Committee, in particular the following two submissions -
  - HKMCL's submission dated 10 January 2005 (LC Paper No. CB(1)692/04-05(01)); and
  - HKMCL's submission dated 11 March 2005 (The True Sale Initiative in Germany mentioned in paragraph 3 of and Annex 2 to LC Paper No. CB(1)1113/04-05(01)).
- (vi) To provide information on the practices of local and overseas regulators in treating securitization SPEs.

(b) Proposed "true and fair view override" provisions

The Administration undertook to take the following actions -

- (i) To provide draft Committee Stage amendment (CSA) to remove the words "In the following provision of this section or" from the existing section 123(3) of the Companies Ordinance (CO) (paragraph 21 of LC Paper No. CB(1)1207/04-05(04)); and
- (ii) To provide draft CSA to the proposed section 123(4) of CO to expressly provide that the new subsection (4) should not affect the generality of the existing subsection (1) (paragraph 17 of LC Paper No. CB(1)1207/04-05(04)).

(c) Section 3(3) of the proposed 23<sup>rd</sup> Schedule to CO

On the Administration's proposal to remove section 3(3) from the proposed 23<sup>rd</sup> Schedule to CO, the Administration accepted the suggestion of the Legal Adviser to the Bills Committee that it would review the need of introducing any consequential amendments, such as amendment(s) to section 7(b) of the proposed 23<sup>rd</sup> Schedule.

(d) Clause-by-clause examination of the Bill

To facilitate the clause-by-clause examination of the Bill, the Administration was requested to provide draft proposed CSAs for the Bills Committee's consideration.

Work plan

Admin

4. The Chairman requested the Administration to report to the Bills Committee at the next meeting on its plan for resumption of the Second Reading debate on the Bill (including the target date for resumption) and its assessment of the number of meetings required for completing scrutiny of the Bill.

Date of next meeting

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 26 April 2005, at 10:45 am.

**III. Any other business**

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

Council Business Division 1  
Legislative Council Secretariat  
20 April 2005

## Appendix

### Proceedings of the seventh meeting of the Bills Committee on Companies (Amendment) Bill 2004 on Thursday, 7 April 2005, at 8:30 am in Conference Room A of the Legislative Council Building

Time marker	Speaker	Subject(s)	Action Required
000000-000120	Chairman	Confirmation of minutes of meeting on 15 March 2005	
000121-001514	Administration	<p><u>Impact of the Bill on the asset-securitization market in Hong Kong</u> (LC Paper Nos. CB(1)938/04-05(09), 668/04-05(03), 1207/04-05(02))</p> <p>Briefing by the Administration on its response in LC Paper No. CB(1) 1207/04-05(02)</p>	
001515-003802	Mr Ronny TONG Chairman Administration	<p><u>Concern about the possible negative impact of the Bill on the development of the asset-securitization market in Hong Kong</u> (LC Paper Nos. CB(1)1113/04-05(01), 1130/04-05(01) and (02))</p> <p>(a) Request for the Administration to re-assess the impact of the Bill on the asset-securitization market in Hong Kong in view of the grave concern expressed by the industry</p> <p>(b) Request for the</p>	<p>Administration to take action under paragraph 3(a) of the minutes</p> <p>Administration to</p>



Time marker	Speaker	Subject(s)	Action Required
		<p>Administration to provide the following information with relevant statistics -</p> <p>(i) Existing size of the asset-securitization market in Hong Kong and its expected growth;</p> <p>(ii) Existing role and contribution of the asset-securitization industry in promoting Hong Kong's economy and maintaining Hong Kong's status and competitiveness as an international financial centre; and</p> <p>(iii) Impact of the Bill on items (i) and (ii) above</p> <p>(c) Request for the Administration to provide justifications for its view that off-balance sheet treatment for securitization special purpose entities (SPEs) might result in "distortion of financial statements of the group as a whole to the extent that they do not show a true and fair view" (paragraph 7 of LC Paper No. CB(1)938/04-05(09))</p> <p>(d) The Administration's view that -</p>	<p>take action under paragraph 3(a)(i) of the minutes</p> <p>Administration to take action under paragraph 3(a)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(i) it attached great importance to the development of the asset-securitization market, and the Bill would not have negative impact on the development of the asset-securitization market in Hong Kong;</p> <p>(ii) the Bill would enhance the quality of financial reporting in Hong Kong and help reinforce Hong Kong's position as an international financial centre; and</p> <p>(iii) at present, non-Hong Kong companies listed in the Stock Exchange of Hong Kong were already required under the Listing Rules to comply with Hong Kong Accounting Standard (HKAS) 27 (equivalent to International Accounting Standard (IAS) 27) to consolidate the accounts of their "subsidiaries", and Hong Kong incorporated companies were required to disclose financial information of "subsidiary undertakings", that were excluded from consolidation by virtue</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>of the Companies Ordinance (CO) but would have been required to be consolidated by virtue of accounting standards, in the “notes to accounts”</p>	
003803-004555	Mr Albert HO Administration	<p>(a) Request for the Administration to provide information on the practices of local and overseas regulators in treating securitization SPEs</p> <p>(b) Request for the Administration to respond to Professor Kalok CHAN’s views that the Bill would increase the cost for the asset-securitization industry and reduce the incentive for business if the originator of securitization transaction had to modify the structure of SPEs in order to avoid the latter to fall within the proposed definition of “subsidiary” under the Bill (second last paragraph of LC Paper No. CB(1)1130/04-05(01))</p> <p>(c) The Administration’s advice that -</p> <p>(i) the concern about consolidation of securitization SPEs affecting the capital adequacy ratio and other</p>	<p>Administration to take action under paragraph 3(a)(vi) of the minutes</p> <p>Administration to take action under paragraph 3(a)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>ratio of a company was a matter relating to financial regulation rather than financial reporting;</p> <p>(ii) financial reporting of a company was concerned about whether the financial statements of the company were able to give a “true and fair view” of the company’s accounts; and</p> <p>(iii) some local and overseas regulators had put in place other measures for financial regulation of companies</p>	
004556-004750	Hong Kong Institute Certified Public Accountants (HKICPA)	Contents of a company’s accounts and what constituted a “true and fair view” of a company’s accounts	
004751-005050	Mr Albert HO	<p>(a) Concern about the possible negative impact of the Bill on the development of asset-securitization market in Hong Kong and request for the Administration to re-assess the impact of the Bill in this regard</p> <p>(b) Request for the Administration to respond to -</p> <p>(i) the concern of the Hong Kong Mortgage</p>	<p>Administration to take action under paragraph 3(a) of the minutes</p> <p>Administration to take action under paragraph 3(a)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>Corporation Limited (HKMCL) that the Bill would reduce the incentives for securitization transactions (paragraph 14 of LC Paper No. CB(1)1113/04-05(01)); and</p> <p>(ii) the concern of the Hong Kong Capital Markets Association that the continued growth of asset-securitization market would only be supported by the ability to achieve off balance sheet treatment for securitized assets, which the Bill would unfortunately curtail (paragraph 4 of LC Paper No. CB(1)647/04-05(01))</p>	
005051-005527	<p>Chairman Assistant Legal Adviser 7 (ALA7) Ms Miriam LAU Clerk</p>	<p>Statistics on the size and activities of the asset-securitization markets in Hong Kong and overseas jurisdictions (LC Paper Nos. CB(1)647/04-05(01) and CB(1)692/04-05(03))</p>	
005528-010710	<p>Ms Miriam LAU Administration</p>	<p><u>International Accounting Standards Board (IASB)’s review on the “control-based’ definition of “subsidiary”, and its position on providing carve-out for securitizations SPEs</u> (Paragraphs 7, 8 and 11 of LC</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Paper No. CB(1)1207/04-05(02))</p> <p>(a) A member’s observation that it was IASB’s view that there “should be no specific exemptions from consolidation on the basis of transaction types (such as for certain types of securitization)”, and IASB was not strongly recommending against any carve-out</p> <p>(b) Concern about the possible negative impact of the Bill on development of the asset-securitization market in Hong Kong</p> <p>(c) Concern about the need for the Administration to put forward the proposals under the Bill at the present stage</p>	
010711-011805	Ms Miriam LAU Chairman Administration HKICPA	<p>(a) Whether the current off-balance sheet treatment for securitization SPEs under existing HKASs had failed to give a “true and fair view” of a company’s accounts</p> <p>(b) The Administration’s advice that -</p> <p>(i) a number of overseas jurisdictions had already adopted IAS 27, and there was no adverse impact on the development of their</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>asset-securitization markets; and</p> <p>(ii) the proposal enshrined in the Bill was a part of the Companies (Amendment) Bill 2003, but was subsequently deleted from the 2003 Bill due to the lack of sufficient time for LegCo to scrutinize the proposal</p> <p>(c) HKICPA’s explanation about -</p> <p>(i) what constituted a “true and fair view” of a company’s accounts; and</p> <p>(ii) the gap between the definition of “subsidiary” under the existing CO and that under IAS 27, and the interim arrangement set up in HKAS 27 whereby Hong Kong incorporated companies were required to disclose financial information of “subsidiary undertakings”, that were excluded from consolidation by virtue of CO but would have been required to be consolidated by virtue of accounting standards, in the “notes to accounts”</p>	

Time marker	Speaker	Subject(s)	Action Required
011806-013305	Mr Ronny TONG HKICPA Chairman	<p>(a) What constituted a “true and fair view” of a company’s account</p> <p>(b) Request for the Administration to provide information on the size of the asset-securitization markets in overseas jurisdictions, and the development and growth of such markets after the adoption of IAS 27, if applicable</p> <p>(c) Request for the Administration to clarify whether the current off-balance sheet treatment for securitization SPEs had failed to give a “true and fair view” of a company’s group accounts</p>	<p>Administration to take action under paragraph 3(a)(iv) of the minutes</p> <p>Administration to take action under paragraph 3(a)(iii) of the minutes</p>
013306-013559	Miss TAM Heung-man Chairman	Types of control that an originator of securitization transaction needed to exercise over its securitization SPE	
013600-013720	Ms Miriam LAU Administration	Urgency for passing the Bill	
013721-013825	ALA7	Overseas experience in treating securitization SPEs (LC Paper No. CB(1)692/04-05(01))	
013826-014115	Chairman Mr Ronny TONG Ms Miriam LAU	Request for the Administration to provide detailed response in respect of overseas experience mentioned in various submissions	Administration to take action under paragraph 3(a)(v) of the minutes



Time marker	Speaker	Subject(s)	Action Required
		<p>received by the Bills Committee, in particular the following two submissions -</p> <p>(a) HKMCL's submission dated 10 January 2005 (LC Paper No. CB(1)692/04-05(01)); and</p> <p>(b) HKMCL's submission dated 11 March 2005 (The True Sale Initiative in Germany mentioned in paragraph 3 of and Annex 2 to LC Paper No. CB(1)1113/04-05(01))</p>	
014116-014256	Chairman	<p><u>Work plan</u></p> <p>Request for the Administration to report at the next meeting on its plan for resumption of the Second Reading debate on the Bill (including the target date for resumption) and its assessment on the number of meetings required for completing scrutiny of the Bill</p>	Administration to take action under paragraph 4 of the minutes
014257-015007	Administration ALA7 Ms Miriam LAU	<p><u>Section 3(3) of the proposed 23<sup>rd</sup> Schedule to CO</u> (Paragraphs 3 to 15 of LC Paper No. CB(1)1207/04-05(04))</p> <p>(a) Briefing by the Administration on its response -</p> <p>(i) The Administration's proposal to remove section 3(3) from the proposed 23<sup>rd</sup> Schedule to CO;</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) Whether section 3(3) was applicable to different scenarios of “parent and subsidiary” relationship between entities; and</p> <p>(iii) How a parent company should deal with shares of itself held, not directly by the company, but through a subsidiary company</p> <p>(b) ALA7’s suggestion for the Administration to review the need of introducing any consequential amendments, such as amendment(s) to section 7(b) of the proposed 23<sup>rd</sup> Schedule</p>	<p>Administration to take action under paragraph 3(c) of the minutes</p>
015008-020349	<p>Chairman Administration Mr Ronny TONG</p>	<p><u>Proposed “true and fair view” provisions</u> (Paragraphs 16 to 22 of LC Paper No. CB(1)1207/04-05(04))</p> <p>(a) Administration’s undertaking to take the following actions -</p> <p>(i) To provide draft Committee Stage amendment (CSA) to remove the words “In the following provision of this section or” from the existing section 123(3) of CO (paragraph 21 of LC Paper No. CB(1)1207/04-05(04));</p>	<p>Administration to take action under paragraph 3(b)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>and</p> <p>(ii) To provide draft CSA to the proposed section 123(4) of CO to expressly provide that the new subsection (4) should not affect the generality of the existing subsection (1) (paragraph 17 of LC Paper No. CB(1)1207/04-05(04))</p> <p>(b) A member's concern about overlap between proposed subsection (4) of section 123 of CO and existing subsection (1)</p> <p>(c) The Administration's view that although the existing subsection (1) of section 123 overlapped with the proposed subsection (4) to a certain extent, the proposed subsection (4) should be maintained (Paragraph 17 of LC Paper No. CB(1)1207/04-05(04))</p>	<p>Administration to take action under paragraph 3(b)(ii) of the minutes</p>
020350-020409	Chairman	Date of next meeting	
020410-020530	Administration Chairman Ms Miriam LAU	<p><u>Matters to be discussed at the next meeting</u></p> <p>(a) Outstanding issues relating to section 128 of CO (Paragraphs 16 to 19 of LC Paper No. CB(1)825/04-05(02));</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>(b) Administration's response to the submissions from the Company &amp; Financial Law Committee of the Law Society of Hong Kong and Linklaters (LC Paper No. CB(1)681/04-05(02))</p> <p>(c) Matters arising from this meeting; and</p> <p>(d) Clause-by-clause examination of the Bill</p>	<p>Administration to provide draft proposed CSAs for consideration of the Bills Committee under paragraph 3(d) of the minutes</p>