

立法會
Legislative Council

LC Paper No. CB(1)1653/04-05

(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/04

Bills Committee on Companies (Amendment) Bill 2004

**Minutes of the ninth meeting held on
Friday, 13 May 2005, 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 LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man

Members absent : Hon Albert HO Chun-yan
Hon Abraham SHEK Lai-him, 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

Ms Beverly YAN
Senior Government Counsel
Department of Justice

Mr Allen LAI
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 (Standard Setting)

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)1490/04-05) — Minutes of eighth meeting held on 26 April 2005)

The minutes of the meeting held on 26 April 2005 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)1511/04-05(01)) — “Follow-up to the eighth meeting on 26 April 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1511/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 26 April 2005”
- LC Paper No. CB(3)41/04-05 — The Bill
- LC Paper No. CB(1)161/04-05(01) — Marked-up copy of the Companies (Amendment) Bill 2004
- LC Paper No. CB(1)1353/04-05(03) — “Summary of amendments to individual clauses of the Bill proposed by the Bills Committee, Administration or organizations (Position as at 21 April 2005)” prepared by the Legislative Council Secretariat
- Annex to LC Paper No. — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 26 April 2005”

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

Follow-up actions to be taken by the Administration

3. Admin 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
The Administration undertook to endeavour to present the following information to the Bills Committee at the next meeting on 23 May 2005 -
- (i) Outcome of the Administration’s re-assessment of the impact of the Bill on the asset-securitization market in Hong Kong; and

- (ii) The information and written responses requested by members at the meeting on 7 April 2005 (i.e. item 1 of LC Paper No. CB(1)1353/04-05(01)).
- (b) Clause 3 - proposed amendments to section 123 of the Companies Ordinance (CO)
To address members' concern about the effect and drafting of subsections (1), (2), (3), (4) and (4A) of section 123 of CO, the Administration agreed to take the following actions -
- (i) To review and simplify the drafting of the existing subsections (1), (2), (3) and the proposed new subsections (4) and (4A) to set out clearly the Administration's policy intent, as follows –
- A company's balance sheet and profit and loss account should comply with the "true and fair view" requirement (subsection (1)) and the requirements of the Tenth Schedule of CO (subsection (2)), and the former requirement was overriding;
 - Where compliance with the requirements of the Tenth Schedule and other requirements of CO would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company, then:
 - additional information as might be necessary to give a true and fair view thereof should be given in the company's accounts or statement (proposed subsection (4)); or
 - the directors should depart from the requirements to the extent as might be necessary to give a true and fair view, and give the reasons for and particulars and effects of such departure in the company's accounts or statement (proposed subsection (4A)).
- (ii) In connection with item (b)(i) above, to consider the following drafting suggestions -
- To incorporate the gist of the proposed subsections (4) and (4A) in the existing subsections (2) and (3); and
 - To consolidate subsections (4) and (4A) and replace "Without affecting the generality of subsections (1), (2) and (3)" at the beginning of the proposed subsection (4) by "Without prejudice to subsections (1), (2) and (3)".

(c) Clause 5 – proposed amendments to section 126 of CO

The Administration agreed to review the proposed amendments to section 126 of CO in connection with the review of clause 3 mentioned under item (b) above.

(d) Clause 10 – proposed section 140(2)(d) of CO

Given that a company might have more than one subsidiary and that a subsidiary undertaking might have more than one company as its parent undertaking, the Administration undertook to propose Committee Stage amendments to replace the word “the” at the beginning of subsection (2)(d)(i) and (ii) by “a”.

(e) Clause 19 – transitional provisions

In response to comments made by the Legal Adviser to the Bills Committee, the Administration was requested to take the following actions -

(i) To confirm whether other statutes had adopted similar wordings used in the English text of clause 19(2); and

(ii) To re-consider the drafting of the Chinese text of clause 19(2) to achieve consistency with any previous standard formulation.

Work progress

4. The Bills Committee completed clause-by-clause examination of the English text of the Bill. The Chairman invited the Administration to provide as early as possible its written response to the outstanding policy and drafting issues, and a full set of the updated draft proposed Committee Stage amendments (CSAs) to the Bill. The Chairman also invited Assistant Legal Adviser 7 to examine the Chinese text of the Bill and the draft CSAs.

5. The Chairman reminded members that three more meetings had been scheduled for 23 May, 31 May and 7 June 2005. The following issues would be discussed at the next meeting to be held on Monday, 23 May at 8:30 am:

(a) Impact of the Bill on the asset-securitization market in Hong Kong; and

(b) Matters arising from this meeting.

6. Responding to the Chairman’s enquiry, the Clerk advised that if the Second Reading debate on the Bill was to be resumed within the current session, the Bills Committee had to report the outcome of its deliberations to the House Committee on 17 June 2005 at the latest. Subject to the Bills Committee’s acceptance of the Administration’s written response to the outstanding policy and drafting issues, the

Bills Committee should be able to complete the scrutiny of the Bill by mid-June 2005.

III. Any other business

7. There being no other business, the meeting ended at 10:15 am.

Council Business Division 1
Legislative Council Secretariat
30 May 2005

Appendix

**Proceedings of the ninth meeting of the
Bills Committee on Companies (Amendment) Bill 2004
on Friday, 13 May 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000222	Chairman	Confirmation of minutes of meeting on 26 April 2005	
000223-000252	Chairman Administration	<u>Impact of the Bill on the asset-securitization market in Hong Kong</u> Administration's undertaking to endeavour to present the following information to the Bills Committee at the next meeting on 23 May 2005: (a) Outcome of the Administration's re-assessment of the impact of the Bill on the asset-securitization market in Hong Kong; and (b) The information and written responses requested by members at the meeting on 7 April 2005 (i.e. item 1 of LC Paper No. CB(1)1353/04-05(01)).	Administration to take action under paragraph 3(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
000253-000753	Mr Ronny TONG Chairman Administration Hong Kong Institute of Certified Public Accountants (HKICPA)	Report of consolidated financial statements under the International Financial Reporting Standards by the Standard Chartered Banking Group and the Group's involvement in securitization business	
000754-001056	Chairman	<p><u>Clause-by-clause examination of the Bill</u> (LC Paper Nos. CB(3)41/04-05, CB(1)161/04-05(01), CB(1)1353/04-05(03) and CB(1)1511/04-05(02))</p> <p><u>Proposed new clause 1A (section 2(5) of the Companies Ordinance (CO)), clause 18 (sections 4(c) and 7(c) of the proposed 23rd Schedule to CO)</u></p> <p>Members' agreement with the draft proposed Committee Stage amendments (CSAs) to the sections named above</p>	
001057-001223	Chairman Administration	<p><u>Clause 18</u></p> <p><u>New section 2(4) of the proposed 23rd Schedule</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Members' agreement with the draft proposed CSA to add the new section 2(4)</p>	

Time marker	Speaker	Subject(s)	Action Required
001224-002129	Chairman Administration Senior Assistant Legal Adviser 2 (SALA2) Mr Ronny TONG	<p><u>Section 8 of the proposed 23rd Schedule</u></p> <p>(a) Briefing by the Administration on the purpose of section 8, reasons for the different treatments of rights under subsections (a) and (b), the Administration's response to the concern about drafting of section 8, and the provisions in UK Companies Act 1985 on which section 8 was modelled (Paragraphs 3 to 6 of LC Paper No. CB(1)1511/04-05(02))</p> <p>(b) Whether the word "and" or "or" should be used for connecting subsections (a) and (b) of section 8</p> <p>(c) Members' agreement with the draft proposed CSA to replace the word "and" connecting subsections (a) and (b) of section 8 by "or"</p>	
002130-002449	Chairman Administration	<p><u>Section 9 of the proposed 23rd Schedule</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Use of the words "section" and "paragraph" in schedules to ordinances</p>	

Time marker	Speaker	Subject(s)	Action Required
002450-002705	Chairman Administration	<u>Section 10 of the proposed 23rd Schedule</u> Briefing by the Administration	
002706-002807	Chairman Administration	<u>Clause 2</u> Administration's confirmation that while a CSA was proposed to add "or subsidiary company" in the English text of the proposed section 2B(2)(b), there was no need to amend the Chinese text of the subsection	
002808-010434	Chairman Administration Mr Ronny TONG SALA2 HKICPA	<u>Clause 3 - section 123 of CO</u> (a) Briefing by the Administration (b) Members' concern about the effect and drafting of subsections (1), (2), (3), (4) and (4A) of section 123, in particular that the Administration's policy intent was not clearly reflected in the subsections (c) Purpose of subsection (3) and the effect of repealing the subsection (d) Administration's explanation that - (i) subsection (1) was overriding; and (ii) as subsection (3) referred to Part III of the Tenth	

Time marker	Speaker	Subject(s)	Action Required
		<p>Schedule (concerning the accounting requirements for banking and insurance companies) and any other requirements of CO, the repeal of subsection (3) would have implications far beyond the purpose of the Bill</p> <p>(e) Request for the Administration to review and simplify the drafting of the existing subsections (1), (2), (3) and the proposed new subsections (4) and (4A) to set out clearly the Administration's policy intent, as follows -</p> <p>(i) A company's balance sheet and profit and loss account should comply with the "true and fair view" requirement (subsection (1)) and the requirements of the Tenth Schedule of CO (subsection (2)), and the former requirement was overriding;</p> <p>(ii) Where compliance with the requirements of the Tenth Schedule and other requirements of CO would not be sufficient to give a true and fair view of the state of affairs or the profit or</p>	<p>Administration to take action under paragraph 3(b)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>loss of the company, then:</p> <ul style="list-style-type: none"> - additional information as might be necessary to give a true and fair view thereof should be given in the company's accounts or statement (proposed subsection (4)); or - the directors should depart from the requirements to the extent as might be necessary to give a true and fair view, and give the reasons for and particulars and effects of such departure in the company's accounts or statement (proposed subsection (4A)) <p>(f) In connection with item (e) above, request for the Administration to consider the following drafting suggestions -</p> <ul style="list-style-type: none"> (i) To incorporate the gist of the proposed subsections (4) and (4A) in the existing subsections (2) and (3); and (ii) To consolidate subsections (4) and (4A) 	Administration to take action under paragraph 3(b)(ii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>and replace “Without affecting the generality of subsections (1), (2) and (3)” at the beginning of the proposed subsection (4) by “Without prejudice to subsections (1), (2) and (3)”</p> <p>(g) Administration’s briefing on its written responses to comments on clause 3 made by members of the Bills Committee in previous meetings, Linklaters, and the Hong Kong Mortgage Corporation Limited (HKMCL) (LC Paper No. CB(1)1353/04-05(03))</p>	
010435-010511	Chairman Administration	<p><u>Clause 4 - section 124 of CO</u></p> <p>(a) Briefing by the Administration on its proposal to delete clause 4 in response to comments made by deputations (LC Paper No. CB(1)1353/04-05(03))</p> <p>(b) Members’ agreement with the draft proposed CSA to delete clause 4</p>	
010512-010603	Chairman Administration SALA2	<p><u>Clause 5 - section 126 of CO</u></p> <p>(a) Briefing by the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
		(b) Administration's agreement to review the proposed amendments to section 126 in connection with the review of clause 3 of the Bill	Administration to take action under paragraph 3(c) of the minutes
010604-010649	Chairman Administration	<u>Clause 6 - section 127 of CO</u> Briefing by the Administration	
010650-011919	Chairman Administration SALA2 Mr Ronny TONG	<u>Clause 7 - section 128 of CO</u> (a) Briefing by the Administration on the draft proposed CSAs to section 128(1)(b) and to add the new subsection (1)(ba) in response to comments made by the Company & Financial Law Committee of the Law Society of Hong Kong (Law Soc) (LC Paper No. CB(1)1353/04-05(03)) (b) Whether it was appropriate to require disclosure of the address of a subsidiary's principal place of business as proposed in the new subsection (1)(ba) (c) Administration's advice that the requirement for a subsidiary which was unincorporated to disclose the address of its principal place of business was modelled on the UK Companies Act 1985 (d) Administration's explanation	

Time marker	Speaker	Subject(s)	Action Required
		on the draft proposed CSA to the Chinese text of section 128(2)(a) in response to the suggestion made by the Legal Adviser to the Bills Committee (LC Paper No. CB(1)1353/04-05(03))	
011920-012109	Chairman Administration	<u>Clause 8 – new section 129A of CO</u> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) Members' agreement with the draft proposed CSAs to the proposed section 129A(1) 	
012110-012154	Chairman Administration	<u>Clause 9 - section 129D of CO</u> <p>Briefing by the Administration</p>	
012155-012539	Chairman Administration Mr Ronny TONG SALA2	<u>Clause 10 – section 140 of CO</u> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) Administration's undertaking to propose CSAs to replace the word "the" at the beginning of subsection (2)(d)(i) and (ii) of section 140 by "a" given that a company might have more than one subsidiary and that a subsidiary undertaking might have more than one company as its parent undertaking 	Administration to take action under paragraph 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action Required
012540-012559	Chairman Administration	<u>Clause 11 - section 161 of CO</u> Briefing by the Administration	
012600-012719	Chairman Administration	<u>Clause 12 - section 163B of CO</u> Briefing by the Administration	
012720-013026	Chairman Administration SALA2	<u>Clause 13 – section 360 of CO</u> (a) Briefing by the Administration on clause 13 and its written response to the comment made by Law Soc (b) Future amendment to the 23 rd Schedule to CO	
013027-013124	Administration Chairman	<u>Clause 14 - Second Schedule to CO</u> Briefing by the Administration	
013125-013244	Chairman Administration	<u>Clause 15 - Third Schedule to CO</u> Briefing by the Administration	
013245-013338	Chairman Administration	<u>Clauses 16 and 17 - Fourth and Tenth Schedules to CO</u> Briefing by the Administration	
013339-014117	Chairman Administration SALA2 Ms Miriam LAU	<u>Clause 19 - transitional provisions</u> (a) Briefing by the Administration (b) Publicity work to enhance companies' awareness of the commencement of the Bill (clause 19(1))	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) Request for the Administration to take the following actions in response to the comments made by the Legal Adviser to the Bills Committee -</p> <ul style="list-style-type: none"> (i) To confirm whether other statutes had adopted similar wordings used in the English text of clause 19(2); and (ii) To re-consider the drafting of the Chinese text of clause 19(2) to achieve consistency with any previous standard formulation 	Administration to take action under paragraph 3(e) of the minutes
014118-014218	Chairman Administration	<p><u>Clause 20 - consequential amendments to the Specification of Public Offices</u></p> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) Members' agreement with the draft proposed CSA to clause 20 in response to the suggestion by the Legal Adviser to the Bills Committee (LC Paper No. CB(1)1353/04-05(03)) 	

Time marker	Speaker	Subject(s)	Action Required
014219-014324	Chairman Administration	<u>Clause 21 - consequential amendments to the Insurance Companies Ordinance</u> Briefing by the Administration	
014325-014444	Chairman Administration	Date of next meeting and matters for discussion	
014445-014600	Chairman Clerk	Work progress of the Bills Committee	

Council Business Division 1
Legislative Council Secretariat
30 May 2005