

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1835/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/04

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

**Minutes of the tenth meeting held on  
Monday, 23 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)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, 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 CHAN Kam-lam, JP  
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 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

Miss Monna LAI  
Assistant Legal Adviser 7

Ms Connie SZETO  
Senior Council Secretary (1)4

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- I. Meeting with the Administration**  
(LC Paper No. CB(1)1581/04-05(01) — “Follow-up to the ninth meeting on 13 May 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1581/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 13 May 2005”
- LC Paper No. CB(1)1353/04-05(01) — “Follow-up to the seventh meeting on 7 April 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1581/04-05(03) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 7 April 2005”
- LC Paper No. CB(1)1581/04-05(04) — Submission dated 19 May 2005 from the Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)709/04-05(01) — Submission dated 12 January 2005 from the Hong Kong Institute of Certified Public Accountants
- LC Paper No. CB(1)692/04-05(01) — Submission dated 10 January 2005 from The Hong Kong Mortgage Corporation Limited
- 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)647/04-05(01) — Submission dated 31 December 2004 from the Hong Kong Capital Markets Association
- 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)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”)

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

### Follow-up actions to be taken by the Administration

2. 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 was requested to consider and provide written responses to members' views and suggestions, as follows -

(i) While members had no objection in principle to the Administration's proposal to amend the definition of the term "subsidiary" in the Companies Ordinance (CO) for the purposes of group accounts to make it more closely aligned with International Accounting Standard (IAS) 27, they were concerned whether the proposed amendment, in particular the scope of its application, was in line with the practices adopted by other major international financial centres. In this connection, members noted that -

- New York and Japan had not adopted IAS 27;
- all European Union members required only listed companies to prepare group accounts on the basis of IAS 27 starting from 1 January 2005;
- while listed companies in the United Kingdom (UK) were required to comply with IAS 27 when preparing group accounts since January 2005, non-listed companies in UK were allowed to opt between adopting the existing arrangement which permitted linked presentation method and IAS 27 in consolidating their group accounts;
- as regards Australia, the Hong Kong Mortgage Corporation Limited had pointed out in its submission dated 10 January 2005 (LC Paper No. CB(1)692/04-05(01)) that it was expected that the adoption of IAS/International Financial Reporting Standard from 1 January 2005 would cause all traditional securitization vehicles to be consolidated by the sponsor. As a result the Australian Securitization Forum had recently kicked off a global project, with the endorsement of the International Accounting Standards Board, to develop a revised model for accounting for securitization transactions. There were four co-chairs of the project, including two from the American Securitization Forum and one from the European Securitization Forum; and
- At present, listed companies in Hong Kong were required by the Listing Rules to comply with IAS 27 or Hong Kong Accounting Standard (HKAS) 27.

(ii) In the light of the overseas practices mentioned in item (i) above,

members were concerned whether it was justified for Hong Kong to achieve full compliance with IAS 27 at this stage ahead of other major international financial centres and the impact of such on the development of the local asset-securitization market. The Administration was requested to explore possible options to address this concern. Two suggested options were as follows -

- To offer different treatment to listed and non-listed companies in Hong Kong (e.g. to apply the Bill only to listed companies, and allow the non-listed companies to follow the existing practices or to opt between adopting the linked presentation method and IAS 27 in consolidating their group accounts);
- To achieve full compliance with IAS 27 in two phases with the listed companies in Hong Kong covered by the first phase and the non-listed companies by the second phase.

(iii) On the option mentioned in item (ii) above, the Administration was requested to advise whether the linked presentation method could give a “true and fair view” of the state of affairs or the profit or loss of the company concerned; and in this connection, to see whether there was a need to set out clearly in the CO that non-listed companies adopting the linked presentation method were deemed to have complied with the “true and fair view” requirement; and

(iv) On the two options mentioned in item (ii) above, the Administration was requested to explore, in consultation with the Hong Kong Institute of Certified Public Accountants, possible approaches for implementing the two options, including the need for introducing amendments to the CO and/or HKASs.

(b) Clause 19 – transitional provisions

To address members’ concern about the drafting of clause 19(2), the Administration was requested to review the drafting and consider whether the suggested formulation “apply in relation to” was adequate to cover the effect of “apply to” and if so, to simplify the subclause accordingly.

*(Post-meeting note: Administration’s written response was circulated to members vide LC Paper No. CB(1)1655/04-05(02) on 30 May 2005.)*

Date of next meeting

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 31 May 2005, at 10:45 am.

**II. Any other business**

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

Council Business Division 1  
Legislative Council Secretariat  
21 June 2005

**Proceedings of the tenth meeting of the  
Bills Committee on Companies (Amendment) Bill 2004  
on Monday, 23 May 2005, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-001154	Chairman Administration Senior Assistant Legal Adviser 2 (SALA2)	<p><u>Matters arising from the meeting on 13 May 2005</u></p> <p>(a) Briefing by the Administration on the draft proposed Committee Stage amendments (CSAs) to address members' suggestions or views on the following clauses:</p> <p>(i) clause 3 - proposed amendments to section 123 of the Companies Ordinance (CO) (Pages 1 to 3 and footnotes 1 to 3 of LC Paper No. CB(1)1581/04-05(02));</p> <p>(ii) clause 5 - proposed amendments to section 126 of CO (Pages 5 to 6 and footnote 4 of LC Paper No. CB(1)1581/04-05(02));</p> <p>(iii) clause 10 - proposed section 140(2)(d) of CO (Page 6 and footnote 5 of LC Paper No.</p>	



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		<p>CB(1)1581/04-05(02)); and</p> <p>(iv) clause 19 - transitional provisions (Footnote 6 and page 7 (CSA to Chinese text only) of LC Paper No. CB(1)1581/04-05(02))</p> <p>(b) Members agreement with the draft proposed CSAs to clauses 3, 5 and 10 of the Bill</p>	
001155-002859	<p>Chairman Administration Ms Miriam LAU Mr Ronny TONG SALA2 Mr Albert HO</p>	<p><u>Clause 19 - transitional provisions</u></p> <p>(a) Concern about the drafting of the Chinese text of clause 19(2)</p> <p>(b) Effect of “apply to” and “in relation to” in clause 19(2)</p> <p>(c) Request for the Administration to review the drafting and consider whether the suggested formulation “apply in relation to” was adequate to cover the effect of “apply to” and if so, to simplify the subclause accordingly</p>	<p>Administration to take action under paragraph 2(b) of the minutes</p>
002900-003134	<p>Chairman Assistant Legal Adviser 7 (ALA7) Administration</p>	<p><u>Chinese text of the Bill</u></p> <p>Chairman’s invitation of ALA7 to examine the Chinese text of the Bill and the draft proposed CSAs</p> <p><u>Consequential amendment in respect of the proposed deletion of</u></p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p><u>section 3(3) from the proposed 23<sup>rd</sup> Schedule to the CO</u></p> <p>The Administration's view that it was not necessary to introduce consequential amendment in respect of the deletion of section 3(3) from the proposed 23<sup>rd</sup> Schedule</p>	
003135-004714	Chairman Administration	<p><u>Impact of the Bill on the asset-securitization market in Hong Kong</u></p> <p>Briefing by the Administration on the outcome of its re-assessment of the impact of the Bill on the asset-securitization market in Hong Kong, further information and responses in respect of the overseas experience mentioned in various submissions received by the Bills Committee (LC Paper No. CB(1)1581/04-05(03)), as follows:</p> <p>(a) The Government attached great importance to the development of securitization market in Hong Kong, and the Government Economist was of the view that the Bill would have a positive impact on the asset-securitization industry as it would enhance the quality of corporate governance and hence the status of Hong Kong as an international financial centre (IFC);</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Australia and Singapore had adopted the “control-based” definition under the International Accounting Standard (IAS) 27 and no negative impact on their securitization markets was revealed, and statistics indicated that the Australian market had doubled in the past few years; and</p> <p>(c) all European Union (EU) members required all listed companies to prepare group accounts based on IAS 27 from 1 January 2005</p>	
004715-004959	Miss TAM Heung-man	<p>(a) Support for the early passage of the Bill</p> <p>(b) It would be inappropriate to provide a carve-out from the Bill for the asset-securitization special purposes entities (SPEs)</p>	
005000-010814	<p>Mr Ronny TONG Administration ALA7 Mr Albert HO Hong Kong Institute of Certified Public Accountants (HKICPA) Chairman</p>	<p><u>Overseas experience</u></p> <p>(a) Statistics on Hong Kong and overseas asset-securitization markets (Table A of LC Paper No. CB(1)1581/04-05(03))</p> <p>(b) Members noted that New York and Japan had not adopted IAS 27</p> <p>(c) Members noted that the Hong Kong Mortgage Corporation</p>	

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		<p>Limited (HKMCL) had pointed out in its submission dated 10 January 2005 (LC Paper No. CB(1)692/04-05(01)) that it was expected that the adoption of IAS/International Financial Reporting Standard from 1 January 2005 would cause all traditional securitization vehicles to be consolidated by the sponsor. As a result the Australian Securitization Forum had recently kicked off a global project, with the endorsement of the International Accounting Standards Board, to develop a revised model for accounting for securitization transactions. There were four co-chairs of the project, including two from the American Securitization Forum and one from the European Securitization Forum</p> <p><u>Arrangements for consolidation of company's group accounts in the United Kingdom (UK)</u></p> <p>(a) Members' noted that while listed companies in the UK were required to comply with IAS 27 when preparing group accounts since January 2005, non-listed companies were allowed to opt between adopting the existing arrangement which permitted</p>	

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		<p>linked presentation method and IAS 27 in consolidating their group accounts</p> <p>(b) HKICPA's advice that the linked presentation method in the UK was not considered as an off-balance sheet treatment for asset-securitization SPEs</p>	
010815-013729	<p>Chairman Mr Ronny TONG Administration HKICPA Ms Miriam LAU ALA7</p>	<p><u>Scope of application of the Bill</u></p> <p>(a) Concern about whether the scope of application of the Bill was in line with the practices adopted by other major IFCs, whether it was justified for Hong Kong to achieve full compliance with IAS 27 at this stage ahead of other major IFCs, and the impact of such on the development of the local asset-securitization market</p> <p>(b) Members noted that at present, listed companies in Hong Kong were required by the Listing Rules to comply with IAS 27 or Hong Kong Accounting Standard (HKAS) 27</p> <p>(c) Whether there should be different treatment for group accounts of listed and non-listed companies in Hong Kong (e.g. to apply the Bill only to listed companies, and allow the non-listed</p>	

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		<p>companies to follow the existing practices or to opt between adopting the UK linked presentation method and IAS 27 in consolidating their group accounts)</p> <p>(d) Whether Hong Kong should achieve full compliance with IAS 27 in two phases with the listed companies in Hong Kong covered by the first phase and the non-listed companies by the second phase</p> <p>(e) UK linked presentation accounting method and feasibility for Hong Kong to adopt the method</p> <p>(f) Suggestions by HKMCL to address concerns of the asset-securitization industry on the impact of the Bill (LC Paper No. CB(1)453/04-05(02))</p>	
013730-015339	<p>Mr Albert HO HKICPA Administration Chairman Mr LUI Ming-wah</p>	<p>(a) Arrangements for consolidation of company's group accounts in EU members</p> <p>(b) Need for amending the definition of "subsidiary" in the CO for the purposes of group accounts to make it more closely aligned with IAS 27</p> <p>(c) HKICPA's illustration of the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>UK linked presentation accounting method</p> <p>(d) Suggestion of implementing the Bill in two phases with the first phase to cover listed companies</p>	
015340-015849	<p>Mr Ronny TONG Chairman ALA7 Mr Albert HO Administration</p>	<p>(a) Whether the UK linked presentation method could give a “true and fair view” of the state of affairs or the profit or loss of the company concerned</p> <p>(b) Whether there was a need to set out clearly in the CO that non-listed companies adopting the linked presentation method were deemed to have complied with the “true and fair view” requirement</p> <p>(c) Request for the Administration to explore, in consultation with HKICPA, possible approaches including the need for introducing amendments to the CO and/or the HKASs for implementing the following options:</p> <p>(i) To offer different treatment to listed and non-listed companies in Hong Kong (e.g. to apply the Bill only to listed companies, and allow the non-listed</p>	<p>Administration to take action under paragraph 2(a)(iii) of the minutes</p> <p>Administration to take action under paragraph 2(a)(iii) of the minutes</p> <p>Administration to take action under paragraph 2(a)(ii) and (iv) of the minutes</p>

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		<p>companies to follow the existing practices or to opt between adopting the linked presentation method and IAS 27 in consolidating their group accounts); and</p> <p>(ii) To achieve full compliance with IAS 27 in two phases with the listed companies in Hong Kong covered by the first phase and the non-listed companies by the second phase</p>	
015850-020126	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
21 June 2005