

立法會
Legislative Council

LC Paper No. CB(1)1836/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/04

Bills Committee on Companies (Amendment) Bill 2004

**Minutes of the eleventh meeting held on
Tuesday, 31 May 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-yee, GBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Members absent** : 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

Mr Paul F Winkelmann
Chairman, Financial Accounting Standards Committee

Ms Elsa HO
Assistant Director (Standard Setting)

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

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Ms Connie SZETO
Senior Council Secretary (1)4

I. Confirmation of minutes of meeting
(LC Paper No. CB(1)1653/04-05 — Minutes of ninth meeting held
on 13 May 2005)

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

- II. Meeting with the Administration**
(LC Paper No. CB(1)1655/04-05(01) — “Follow-up to the tenth meeting on 23 May 2005” prepared by the Legislative Council Secretariat
- 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)1655/04-05(02) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 23 May 2005”
- 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)1655/04-05(03) — Submission dated 30 May 2005 from the Hong Kong Institute of Certified Public Accountants
- 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)453/04-05(02) — Annex 7 to the submission dated 9 December 2004 from The Hong Kong Mortgage Corporation Limited
- 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”

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. 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(1)1655/04-05(04)	—	Letter dated 24 May 2005 from the Assistant Legal Adviser to the Administration
LC Paper No. CB(1)1674/04-05(01)	—	Reply dated 30 May 2005 from the Administration to the Assistant Legal Adviser

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

(Post-meeting note: The following papers were tabled at the meeting and issued to members on 1 June 2005:

- (a) Letter dated 30 May 2005 from the Assistant Legal Adviser to the Administration (with illustration) (LC Paper No. CB(1)1679/04-05(01));
- (b) Extracts from the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (LC Paper No. CB(1)1679/04-05(02)); and
- (c) Submission dated 30 May 2005 from The Hong Kong Mortgage Corporation Limited (LC Paper No. CB(1)1679/04-05(03).)

Follow-up actions to be taken by the Administration

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

(a) Finalized draft proposed Committee Stage amendments (CSAs) to the Bill

The Administration undertook to provide the following papers by 12:00 noon of 3 June 2005 for circulation to members and the Legal Adviser to the Bills Committee -

- (i) Bilingual version of a marked-up copy of the Bill showing the finalized draft CSAs proposed by the Administration (with highlight on updated changes); and
- (ii) Bilingual version of a full set of the finalized draft CSAs proposed by the Administration.

(Post-meeting note: The Administration's papers were circulated to members and the Legal Adviser to the Bills Committee vide LC Paper Nos. CB(1)1701/04-05(01) and (02) on 3 June 2005.)

Next step

4. Members agreed that subject to the finalized draft CSAs being in order, the Bills Committee would support the Administration's proposal that the Second Reading debate on the Bill be resumed at the Council meeting on 29 June 2005. In this connection, the Chairman would present the report of the Bills Committee to the House Committee for its meeting on 10 June 2005.

5. Responding to the Chairman's enquiry, no member indicated that he/she would proposed CSAs to the Bill.

Cancellation of meeting

6. Given that the Bills Committee had completed scrutiny of the Bill, members agreed that the meeting originally scheduled for 7 June 2005 be cancelled.

III. Any other business

Meeting with the Chairman of the International Accounting Standards Board

7. Miss TAM Heung-man informed member that Sir David TWEEDIE, Chairman of the International Accounting Standards Board, would visit Hong Kong in the following week, and that the Hong Kong Institute of Certified Public Accountants (HKICPA) might make arrangement for the Bills Committee to meet with him, if members so wished. The Chairman invited the LegCo Secretariat to follow-up the matter with HKICPA.

8. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
21 June 2005

**Proceedings of the eleventh meeting of the
Bills Committee on Companies (Amendment) Bill 2004
on Tuesday, 31 May 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000256	Chairman	Confirmation of minutes of meeting on 13 May 2005 (LC Paper No. CB(1)1653/04-05)	
000257-002127	Administration	<p><u>Impact of the Bill on the development of asset-securitization market in Hong Kong</u></p> <p>Briefing by the Administration on its responses to address concern about possible negative impact of the Bill on the asset-securitization market in Hong Kong (Paragraphs 2 to 14 of LC Paper No. CB(1)1655/04-05(02)), as follows:</p> <p>(a) On the two options suggested by members, namely to offer different treatment to listed and non-listed companies in Hong Kong, and to achieve full compliance with the International Accounting Standard (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, the Administration maintained</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the view that the Bill should apply to both listed and unlisted companies and that no carve-out should be introduced for any particular sector;</p> <p>(b) Hong Kong's company law and accounting standards had a much closer origin to those in common law jurisdictions such as the United Kingdom (UK), Australia, Singapore, and hence the experience of the United States (US) and Japan should be viewed in the proper context, particularly where Japan was not a common law jurisdiction; and</p> <p>(c) The European Union, the UK, Australia, Singapore, and the US did not have separate regimes for their listed and non-listed companies in relation to the requirements in preparing group accounts</p>	
002128-002653	Chairman Administration	<p><u>Submission dated 30 May 2005 from the Hong Kong Mortgage Corporation Limited (HKMCL)</u> (LC Paper No. CB(1)1679/04-05(03))</p> <p>Members noted that:</p> <p>(a) the Global Securitization Accounting Convergence Committee (GSACC) which comprised the American</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Securitization Forum, Bond Market Association, European Securitization Forum and Australian Securitization Forum was conducting a global survey with the aim of developing a common preferred approach to global accounting; and</p> <p>(b) HKMCL had re-iterated the need of providing a carve-out from the Bill for genuine securitization transactions</p>	
002654-004119	<p>Hong Kong Institute of Certified Public Accountants (HKICPA) Administration Chairman</p>	<p><u>Submission dated 30 May 2005 from HKICPA</u> (LC Paper No. CB(1)1655/04-05(03))</p> <p>Briefing by HKICPA, as follows:</p> <p>(a) HKICPA supported the Bill and considered it inappropriate to adopt the two options suggested by members;</p> <p>(b) Off-balance sheet treatment for a securitization special purpose entity (SPE) would result in the group financial statements of a company not giving a true and fair view;</p> <p>(c) The linked presentation method was a unique concept in the UK and the method would be eliminated when the UK accounting standards moved to converge with</p>	

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		<p>IASs; and</p> <p>(d) Hong Kong had made a conscious decision in the early 1990s to move away from the UK accounting standards to align with IASs</p>	
004120-005937	<p>Assistant Legal Adviser 7 (ALA7) Chairman Administration HKICPA</p>	<p>(a) On the conclusion of the Administration set out in paragraph 14(a) of LC Paper No. CB(1)1655/04-05(02) that there was no comparable jurisdiction in the world maintaining separate regimes for the application of IAS 27 or the control/dominant influence test, ALA7 expressed her views on the European Union's Directive of 1983 requiring Member States to require in their national laws consolidation of accounts (Annex A to LC Paper No. CB(1)1655/04-05(02))</p> <p>(b) Briefing by ALA7 on her letter dated 30 May 2005 to the Administration on requirements for companies to prepare group accounts in Australia, the UK and Hong Kong (LC Paper Nos. CB(1)1679/04-05(01) and (02)). Members noted that:</p> <p>(i) in Australia, while the control test might be relevant in determining whether a company was</p>	

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		<p>a small proprietary company, there was a separate regime for the financial reporting of a small proprietary company;</p> <p>(ii) in the UK, while the control/dominant influence test enshrined in the Companies Act 1985 was relevant in determining the relationship of parent undertaking and subsidiary undertaking, a non-listed company had the option to prepare either a Companies Act group accounts (in which the linked presentation method was available), or an IAS group accounts; and</p> <p>(iii) in Hong Kong, if the Bill was passed, companies would be required to prepare their group accounts in accordance with the proposed definition of “subsidiary” in the Companies Ordinance (CO) which would be more closely aligned with Hong Kong Accounting Standard (HKAS) 27 with no option of off-balance sheet treatment or linked</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p style="text-align: center;">presentation method</p> <p>(c) Administration's advice that the existing CO did not impose financial reporting requirements on companies based on their sizes, and that the small proprietary companies in Australia might not be comparable in size with the asset-securitization companies in Hong Kong</p> <p>(d) HKICPA's view that the regulatory requirements for smaller companies in Australia and the UK were not so relevant to the Bill</p>	
005938-011416	Chairman Mr Ronny TONG Administration Ms Miriam LAU HKICPA	<p><u>Overseas experience</u></p> <p>(a) Members noted that there were differences in the information provided by the Administration and HKMCL regarding statistics on asset-securitization markets, statutory requirements and accounting practices in the preparation of company's group accounts in various jurisdictions</p> <p>(b) Whether it was appropriate for Hong Kong to adopt a phased approach in implementing HKAS 27</p> <p>(c) Administration's view that:</p> <p>(i) there was no convincing</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>evidence suggesting that the Bill would have adverse impact on the development of the asset-securitization market in Hong Kong; and</p> <p>(ii) it was not justified to propose any phased approach with respect to the commencement of the Bill</p> <p>(d) Development of a global accounting framework for all securitization transactions by GSACC</p> <p>(e) Administration’s undertaking to continue monitoring the international development in relation to IASs, and to consider introducing refinements to CO wherever necessary</p> <p>(f) HKICPA’s advice that HKASs would be up-dated to reflect changes in IASs</p>	
011417-011939	Mr Albert HO HKICPA	<p><u>Review of IAS 27</u></p> <p>HKICPA’s advice that the IAS Board had no intention to change the “control-based” test for determining the relationship between the parent and subsidiary undertakings, and the review had been focused on refining the application of the test</p>	

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		<p><u>Adoption of the UK linked presentation accounting in Hong Kong</u></p> <p>HKICPA's advice that it was infeasible for Hong Kong to adopt the linked presentation method, and such proposal was unlikely to be supported by HKICPA</p>	
011940-012204	Chairman Administration ALA7	<p><u>Clause-by-clause examination of the Bill</u></p> <p><u>Clause 19 - transitional provisions</u> (Annex to LC Paper No. CB(1)1655/04-05(02))</p> <p>(a) Briefing by the Administration on the revised draft proposed Committee Stage amendment (CSA) to the English and Chinese texts of clause 19</p> <p>(b) Members' agreement with the revised draft proposed CSA to clause 19</p>	
012205-013939	Chairman ALA7 Administration	<p><u>Chinese text of the Bill and draft proposed CSAs</u> (LC Paper No. CB(1)1511/04-05(02))</p> <p>(a) Briefing by the Administration on clauses 1 to 21 and the draft proposed CSAs</p> <p>(b) Members' agreement with the draft proposed CSAs to the</p>	

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		<p>clauses</p> <p><u>Clause 7</u> (LC Paper Nos. CB(1)1655/04-05(04) and 1674/04-05(01))</p> <p>(a) ALA7's comments on the drafting of the proposed new section 128(2)(a) of CO</p> <p>(b) Administration's explanation on the drafting of the proposed new section 128(2)(a)</p> <p>(c) Members' agreement with the wording of the Chinese text of the proposed new section 128(2)(a) as proposed by the Administration</p>	
013940-014442	Clerk Chairman Administration Ms Miriam LAU	<p><u>Resumption of the Second Reading debate on 29 June 2005</u></p> <p>(a) Request for the Administration to provide the Bills Committee with the following papers by 12:00 noon of 3 June 2005:</p> <p>(i) Bilingual version of a marked-up copy of the Bill showing the finalized draft CSAs proposed by the Administration (with highlight on updated changes); and</p>	Administration to take action under paragraph 3(a) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(ii) Bilingual version of a full set of the finalized draft CSAs proposed by the Administration (b) Cancellation of the meeting, originally scheduled for 7 June 2005	
014443-014605	Miss TAM Heung-man Chairman	Meeting with Sir David TWEEDIE, Chairman of the International Accounting Standards Board	

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21 June 2005