

立法會
Legislative Council

LC Paper No. CB(1)642/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/04

Bills Committee on Companies (Amendment) Bill 2004

**Minutes of the second meeting held on
Thursday, 16 December 2004, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members absent** : Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Abraham SHEK Lai-him, JP
Hon Ronny TONG Ka-wah, SC
- 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
President

Mr Paul F Winkelmann
Chairman, Financial Accounting Standards Committee

Mr Simon RILEY
Technical Director (Financial Reporting)

Ms Elsa HO
Assistant Director (Financial Reporting)

W H Lam & Company

Mr LAM Wai-hay
Sole-Proprietor

Miss LAM Wai-yee
Qualified Assistant

The Hong Kong Mortgage Corporation Limited

Mr James LAU
Chief Executive Officer

Mr Philip LI
Senior Vice President (Finance)

Ms Susie CHEUNG
General Counsel and Company Secretary

Ms Kathleen YEUNG
Vice President (Financial Control)

Hong Kong Capital Markets Association

Mr Brian YIU
Chairman

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

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)315/04-05 — Minutes of first meeting held on
8 November 2004)

The minutes of the meeting held on 8 November 2004 were confirmed.

- II. Meeting with deputations and the Administration**
(LC Paper No. CB(1)453/04-05(01) — W H Lam & Company
(Revised)
- LC Paper No. CB(1)453/04-05(02) — The Hong Kong Mortgage
Corporation Limited
- LC Paper No. CB(1)453/04-05(03) — The Chinese General Chamber
of Commerce
- LC Paper No. CB(1)453/04-05(04) — Securities and Futures
Commission
- LC Paper No. CB(1)453/04-05(05) — The Association of Chartered
Certified Accountants
- LC Paper No. CB(1)453/04-05(06) — The Association of International
Accountants (Hong Kong
Branch)

- LC Paper No. CB(1)453/04-05(07) — The Standing Committee on Company Law Reform
- LC Paper No. CB(1)453/04-05(08) — The Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)453/04-05(09) — The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies
- LC Paper No. CB(1)453/04-05(10) — The Company & Financial Law Committee, Law Society of Hong Kong
- LC Paper No. CB(1)453/04-05(11) — Linklaters
- LC Paper No. CB(1)453/04-05(12) — Mr John BREWER
- LC Paper No. CB(1)453/04-05(13) — Mr David M WEBB
- LC Paper No. CB(1)465/04-05(01) — Summary of submissions
- LC Paper No. CB(1)453/04-05(14) — Administration's responses to six submissions from The Chinese General Chamber of Commerce, Mr David Webb, Securities and Futures Commission, The Association of Chartered Certified Accountants, The Standing Committee on Company Law Reform and The Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)465/04-05(02) — Administration's responses to three submissions from The Association of International Accountants (Hong Kong Branch), The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies and W H Lam & Company

LC Paper No. CB(1)465/04-05(03) — Administration's responses to the submission from The Hong Kong Mortgage Corporation Limited)

2. Mr SIN Chung-kai declared interest that he was a director of the Board of the Hong Kong Mortgage Corporation Limited (HKMCL).

3. 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 17 December 2004 -

- (a) Administration's responses to the submission dated 14 December 2004 from W H LAM & Company (LC Paper No. CB(1)530/04-05(01));
- (b) Sample of group accounts (extract) provided by the Hong Kong Institute of Certified Public Accountants to illustrate the impact of the changes introduced by the Bill (LC Paper No. CB(1)530/04-05(02));
- (c) Information on financial impacts on banks due to accounts consolidation of special purpose entities for securitization purposes provided by HKMCL (LC Paper No. CB(1)530/04-05(03)); and
- (d) Example of UK's "linked-presentation" format for preparation of group accounts provided by HKMCL (LC Paper No. CB(1)530/04-05(04)).

Follow-up actions to be taken by the Administration

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

- (a) Exclusion of subsidiaries from group accounts
In the light of the latest change in the International Accounting Standards (IASs) and latest legislative change in the United Kingdom (UK) regarding conditions for exclusion of subsidiaries from consolidation, the Administration undertook to take follow-up actions, as follows-
 - (i) To consider proposing Committee Stage amendments (CSAs) to the proposed section 124(2A)(a) of the Companies Ordinance (Cap. 32) (CO);
 - (ii) To review the proposed section 124(2A)(b) of the CO and consider proposing a CSA, if necessary; and
 - (iii) To review whether amendments to the existing section 124(2) of the CO were necessary.
- (b) Impact of the Bill on the asset-securitization market in Hong Kong

Given the concern about the possible negative impact of the Bill on the development of asset-securitization market in Hong Kong, the Administration was requested to provide a paper on the subject covering the following aspects -

- (i) Administration's assessment on the impact of the Bill on the asset-securitization market in Hong Kong;
 - (ii) Administration's further response to the following proposals raised by HKMCL -
 - Carve-out for securitization special purpose entities (SPEs);
 - Adoption of the UK's "link-presentation" format for group accounts; and
 - Deferring the Bill until the IAS Board had completed the review of whether the "control" model for subsidiaries should also be applied to SPEs.
 - (iii) In connection with item (ii) above, any other proposals put forward by the Administration to address the concern about the impact of the Bill on the asset-securitization market in Hong Kong.
 - (iv) Provisions for SPEs in the preparation of group accounts in relevant legislation, rules and practices adopted by other jurisdictions, including but not limited to, the UK, the United States (US), Australia and Singapore. The information should specify whether carve-outs and off-balance sheet treatment were provided for SPEs in other jurisdictions.
- (c) Comparison of the Bill with relevant provisions in other jurisdictions
The Administration was requested to provide relevant information in US by expanding the comparison table attached in Annex A to the Administration's paper on "Follow-up actions arising from the discussion at the meeting on 8 November 2004" (LC Paper No. CB(1)453/04-05(16)).
- (d) Proposed "true and fair view override" provisions
The Administration was requested to consider how HKMCL's concerns over the proposed "true and fair view override" provisions could be addressed.

Work plan

5. The Chairman invited the Administration to work out the matters to be discussed by the Bills Committee and the number of meetings required for each matter, and the Clerk to work out a meeting schedule accordingly. The Chairman indicated that future meetings would be held at three-week intervals.

Date of next meeting

6. The Bills Committee agreed that the next meeting be held on Thursday, 13 January 2005, at 8:30 am.

III. Any other business

7. There being no other business, the meeting ended at 10:40 am.

Council Business Division 1
Legislative Council Secretariat
6 January 2005

**Proceedings of the second meeting of the
Bills Committee on Companies (Amendment) Bill 2004
on Thursday, 16 December 2004, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Require
000000-000058	Chairman	(a) Confirmation of minutes of meeting on 8 November 2004 (b) Welcoming and introductory remarks	
000459-001154	W H Lam & Company (Lam & Co)	<u>Presentation of views</u> (LC Paper No. CB(1)453/04-05(01)) Two points of concern - (a) The conditions for exclusion of a subsidiary from the group accounts set out in the proposed section 124(2A)(a) and (b) of the Companies Ordinance (CO) were different from the new Hong Kong Accounting Standard (HKAS) 27 and should be reviewed; and (b) The criteria for excluding a company from the requirement of laying group accounts under the existing section 124(2) of the CO were different from those provided under	

Time marker	Speaker	Subject(s)	Action Require
		HKAS 27 and should be reviewed	
001155-001402	Hong Kong Capital Markets Association (HKCMA)	<p><u>Presentation of views</u> (LC Paper No. CB(1)647/04-05(01)) issued on 6 January 2005)</p> <p>Concern about the negative impact of the Bill on the development of asset-securitization market in Hong Kong</p>	
001403-002348	The Hong Kong Mortgage Corporation Limited (HKMCL)	<p><u>Presentation of views</u> (LC Paper No. CB(1)453/04-05(02))</p> <p>(a) The proposed amendments to entrench the current definition of “subsidiary” in the CO would make off-balance sheet treatment very difficult and have negative impact on the development of Hong Kong’s asset-securitization market</p> <p>(b) Three proposals to address the concern -</p> <p>(i) To provide carve-out for securitization special purpose entities (SPEs);</p> <p>(ii) To adopt the UK’s “linked-presentation” format for group accounts; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(iii) To defer the Bill until the International Accounting Standards (IASs) Board had completed the review of whether the “control” model for subsidiaries should be applied to SPEs</p> <p>(c) The proposed “true and fair view override” provisions in the Bill might not cater for the evolving accounting standards, and it was proposed that amendments be made to expressly extend the provisions to cover other sections in the CO, in addition to the proposed coverage of the Tenth Schedule of the CO and requirements of the CO as to the matters to be included in company’s accounts</p>	
002349-004535	Chairman Administration	<p><u>Administration’s responses to deputations’ views</u> (LC Paper Nos. CB(1)453/04-05(04), CB(1)456/04-05(02) and (03), CB(1)530/04-05(01))</p> <p>(a) Administration’s advice that it would -</p> <p>(i) consider proposing a Committee Stage amendment (CSAs) to</p>	Administration undertake follow-up actions paragraph (ii), (iii) and the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p>the proposed section 124(2A)(a) of the CO;</p> <p>(ii) review the proposed section 124(2A)(b) of the CO;</p> <p>(iii) review whether amendments should be made to the existing section 124(2) of the CO; and</p> <p>(iv) consider how HKMCL's concerns over the proposed "true and fair view override" provisions could be addressed</p> <p>(b) Administration's view that the proposed amendments would not have negative impact on the asset-securitization market in Hong Kong.</p>	
004536-005026	Hong Kong Institute of Certified Public Accountants (HKICPA) Chairman	<p><u>Impact of the Bill on the asset-securitization market in Hong Kong</u></p> <p>(a) Illustration by HKICPA on the impact of the changes introduced by the Bill on the group accounts of a company (LC Paper No. CB(1)530/04-05(02))</p> <p>(b) HKICPA's view that the proposed changes introduced by the Bill lied</p>	

Time marker	Speaker	Subject(s)	Action Require
		primarily in the format of the account disclosure instead of the content or amount of the disclosure	
005027-005511	HKMCL	<p>(a) Illustration by HKMCL on the financial impacts on banks due to account consolidation of SPEs for securitization purposes (LC Paper No. CB(1)530/04-05(03))</p> <p>(b) HKMCL's view that consolidation of SPEs in the group accounts would result in reduction in a company's capital adequacy ratio and its return on total assets, and increase in its debt-to-equity ratio, hence affecting the funding costs of the company</p>	
005512-005537	Chairman Mr SIN Chung-kai	Declaration of interest as a director of the Board of HKMCL	
005538-010334	Miss TAM Heung-man HKMCL HKICPA	<p>(a) Whether it was appropriate to provide carve-out for securitization SPEs</p> <p>(b) HKMCL's explanation on the example of the UK's "linked-presentation" format for preparation of group accounts (LC Paper No. CB(1)530/04-05(04))</p> <p>(c) HKICPA's view that it was</p>	

Time marker	Speaker	Subject(s)	Action Require
		<p>inappropriate to provide a general carve-out for all securitization SPEs, while it would be acceptable to provide exemption for assets securitization activities carried out by HKMCL</p> <p>(d) A member's support for HKICPA's view</p>	
010335-011102	Chairman HKMCL HKICPA	<p>(a) Impact of the Bill on the development on the asset-securitization market in Hong Kong</p> <p>(b) Whether the Bill would affect the competitiveness of Hong Kong vis-à-vis other countries</p> <p>(c) Legislation, rules and practices in relation to SPEs in the preparation of group accounts in other jurisdictions</p> <p>(d) Desirability of providing a carve-out for asset-securitization activities carried out by HKMCL</p>	
011103-011411	Administration	<p>(a) Administration's emphasis that the Bill would introduce changes in financial reporting of companies instead of financial regulation</p>	

Time marker	Speaker	Subject(s)	Action Required
		(b) Administration's view that there was no strong justification to provide for off-balance sheet treatment for SPEs in the Bill	
011412-011705	Ms Miriam LAU	<p>(a) Request for the Administration's assessment on the impact of the Bill on the development of asset-securitization market in Hong Kong</p> <p>(b) Request for the Administration's proposals to address the concerns raised by the asset-securitization industry</p>	
011706-012435	Administration	<p>(a) Administration's reiteration that the changes introduced by the Bill were related to financial reporting of companies rather than financial regulation</p> <p>(b) Administration's view that financial analysts would conduct thorough examination on a company's accounts to arrive at a comprehensive view of the financial information of the company</p>	
012436-012628	Ms Miriam LAU	Request for provision of information on legislation, rules	Administration provide a

Time marker	Speaker	Subject(s)	Action Required
		and practices adopted by other jurisdictions in the preparation of companies group accounts and treatment for SPEs	under par 4(b)(iv) of minutes
012629-012950	Administration	Administration's advice that it was not necessary for Singapore and Australia to entrench the definition of "subsidiary" in their company laws as their laws had given statutory backing to the financial reporting standards which followed IASs	
012951-013642	HKMCL HKCMA	Concern about the negative impact of the Bill on the development of asset-securitization market in Hong Kong and Hong Kong's competitiveness vis-à-vis other international financial centres	
013643-015132	Miss TAM Heung-man Chairman HKICPA Assistant Legal Adviser 7 (ALA7)	<p>(a) The need to entrench the definition of "subsidiary" in CO and to make the definition in close alignment with that adopted in IASs</p> <p>(b) The impact of the Bill on the asset-securitization industry in Hong Kong</p> <p>(c) The options introduced in the UK for companies to choose either to follow requirements in the UK Companies Act or IASs in the preparation of group accounts</p>	

Time marker	Speaker	Subject(s)	Action Required
015133-020103	Ms Miriam LAU HKCMA ALA7 Administration Chairman	(a) Request for a comparison with relevant provisions and practices in the US (b) Request for Administration - (i) to assess the impact of the Bill on asset-securitization market in Hong Kong; and (ii) to consider proposals put forward by HKMCL and other proposals to address the industry's concerns	Administration provide information paragraph 4 of the minutes Administration provide a under paragraph 4(b)(i), (ii) of the minutes
020104-020334	Chairman	(a) Date of next meeting (b) Work plan of the Bills Committee	Administration the Clerk to follow-up under paragraph of the minutes