

立法會
Legislative Council

LC Paper No. CB(1)1422/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/BC/3/09/2

**Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010**

**First meeting on
Tuesday, 23 February 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP

Members absent : Hon Albert HO Chun-yan
Hon CHIM Pui-chung

Public officers attending : Financial Services and the Treasury Bureau

Mr John LEUNG, JP
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Miss Grace KWOK
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Companies Registry

Ms Elizabeth MO
Deputy Principal Solicitor (Company Law Reform)

Miss Wendy MA
Assistant Registry Manager

Inland Revenue Department

Mrs Brenda LEE
Assistant Commissioner

Mr Eric WAN
Senior Assessor

Department of Justice

Ms Leonora IP
Senior Assistant Law Draftsman

Miss Amy CHAN
Senior Government Counsel

Miss Emma WONG
Senior Government Counsel

Mr Peter SZE
Government Counsel

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Noel SUNG
Senior Council Secretary (1)4

Mr Fred PANG
Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)8

I Election of Chairman

Dr Margaret NG, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. She invited nominations for the chairmanship of the Bills Committee.

2. Mr Paul CHAN was nominated by Dr Philip WONG and the nomination was seconded by Mr CHAN Kam-lam and Ms Miriam LAU. Mr Paul CHAN accepted the nomination. There being no other nomination, Dr Margaret NG declared that Mr Paul CHAN was elected Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(LC Paper No. CB(3)390/09-10	— The Bill on Companies (Amendment) Bill 2010
LC Paper No. CB(3)391/09-10	— The Bill on Business Registration (Amendment) Bill 2010
C2/1/72(2009)	— The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
LC Paper No. LS41/09-10	— The Legal Service Division Report on Companies (Amendment) Bill 2010
LC Paper No. LS40/09-10	— The Legal Service Division Report on Business Registration (Amendment) Bill 2010
LC Paper No. CB(1)1186/09-10	— Background Brief on Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010 prepared by the Legislative Council Secretariat
LC Paper No. CB(1)1201/09-10(01)	— Marked-up copy of the Bill on Companies (Amendment) Bill 2010 prepared by the Legal Service Division

LC Paper No. CB(1)1201/09-10(02) — Marked-up copy of the Bill on Business Registration (Amendment) Bill 2010 prepared by the Legal Service Division)

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

Admin

Follow-up actions to be taken by the Administration

5. In relation to Mr Ronny TONG's concern about the criteria used by the Companies Registry for assessing whether a company name should be accepted for registration, the Administration was requested to provide information on the Companies Registry's guidelines for approving/rejecting a proposed company name.

6. In relation to Mr Ronny TONG's concern about the effects of the proposed legislative amendments on the operation of companies, the Administration was requested to explain the respective arrangements for enforcement of the company name registration requirements under the existing and proposed legislation, and whether and how the arrangements were applicable to overseas companies operating in Hong Kong.

7. In relation to Dr Margaret NG's concern about the effectiveness of the proposed amendments to enhance enforcement against possible abuses by "shadow companies", the Administration was requested to provide information on (a) the compliance requirements on a company in respect of a court's order or the Registrar of Companies' direction to change name; (b) sanctions that could be imposed on a company, if it failed to change its name as required; (c) the cooperation arrangements with other jurisdictions on enforcement against abuses by "shadow companies"; and (d) the views expressed by the relevant sectors when consulted on the legislative amendments.

8. In relation to Mr CHAN Kin-por's concern that under the proposed arrangement, a company might have already opened a bank account before the Registrar of Companies directed the company to change name and continued to use the bank account for illicit purposes despite the Registrar of Companies's direction to change name, the Administration was requested to provide information regarding the means through which a bank could be alerted of the Registrar of Companies' direction to change name in a timely manner.

9. In relation to Mr Ronny TONG's concern regarding the extension of the Companies Ordinance (Cap. 32) to cover "multiple" statutory derivative actions (SDA), the Administration was requested to provide information on (a) the justifications for extending SDA to a member of a related company, in particular to a member of a subsidiary company of a specified corporation; and (b) the relevant arrangements in other common law jurisdictions.

III Any other business

Invitation for views

10. Members agreed to post an invitation on the Legislative Council website to invite the public to give views on the Bills, and to issue letters to the organizations/individuals on the list prepared by the Secretariat and tabled at the meeting to attend the next Bills Committee meeting to express their views and/or provide submissions on the Bills. Dr Margaret NG and the Chairman suggested and members agreed that the relevant trademark and brand name organizations and the company secretarial services sector should also be invited to give their views on the Bills. The Chairman added that members were welcomed to inform the Clerk if they were aware of any other organizations/individuals which/who might be interested in providing views on the Bills.

Date of next meeting

11. The Chairman said that he would work out with the Clerk the arrangements for the next meeting and members would be informed of the details in due course.

(Post-meeting note: Members were informed vide LC Paper No. CB(1)1236/09-10 on 25 February 2010 of the details of the next meeting to be held on 30 March 2010 and the organizations/individuals to be invited to express their views on the Bills and/or attend the next meeting.)

12. There being no other business, the meeting ended at 9:40 am.

Council Business Division 1
Legislative Council Secretariat
19 March 2010

**Proceedings of the
Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010
First meeting on Tuesday, 23 February 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000133 – 000357	Dr Margaret NG Dr Philip WONG Mr CHAN Kam-lam Ms Miriam LAU Mr Paul CHAN	Election of Chairman	
000358 – 002823	Administration	Briefing by the Administration on the proposals in the Bill.	
002824 – 003238	Dr Philip WONG Administration	(a) Dr WONG's concern about the safe custody and back-up system of the company registration database. (b) The Administration's advice that a back-up computer database was provided at a location separated from the Companies Registry for safe custody of the company registration records.	
003239 – 004907	Mr Ronny TONG Administration	(a) Mr TONG's concern about the lack of clear criteria for approving/rejecting a company name. (b) The Administration's explanation that there were laid down guidelines for the Registrar of Companies (the Registrar) to reject or approve a company name. For instance, a company name which was the same as that of another company on the register, constituted a criminal offence or was contrary to the public interest would not be allowed for registration. Special approval had to be sought from the Registrar if a company name gave the impression that the company was	

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		<p>connected with the Hong Kong SAR Government or the Central People's Government, or a company name containing words like "trust". Under the proposed arrangement, the Registrar would be empowered to direct a company which had been registered through the preliminary procedures to change its name within a specified period.</p> <p>(c) Mr TONG's concern about the effects of the proposed legislative amendments on the operation of companies, and the arrangements applicable to overseas companies operating in Hong Kong.</p> <p>(d) The Administration's response that under the proposed legislative amendments, the Registrar would be empowered to act pursuant to a court order to direct a "shadow company" to change its name; and if the company failed to comply with the Registrar's direction, the Registrar might substitute the company's name with its registration number. As for non-Hong Kong company, if its corporate name was the same as or too like a name of an existing company on the register, under the existing legislation, the Registrar might serve a notice on the company and the company would have to use another name but not its corporate name to carry on business in Hong Kong.</p> <p>(e) Mr TONG's concern regarding the extension of the Companies Ordinance (Cap. 32) to cover "multiple" statutory derivative actions (SDA), in particular to a member of a subsidiary company of a specified corporation.</p> <p>(f) The Administration's response that after consulting the Department of Justice, a wider interpretation on "a related company" had been adopted for multiple SDAs, in view of the complicated</p>	

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		<p>structure and diverse capital distribution arrangements of different corporations, and the need to protect the interests of minority shareholders. A member of a company had to apply for leave from the court to commence a SDA.</p> <p>(g) At the request of Mr TONG, the Administration's undertaking to provide the information as per paragraphs 5, 6 and 9 of the minutes.</p>	<p>The Administration to take action as required in paragraphs 5, 6 and 9 of the minutes.</p>
004908 – 005400	Mr CHAN Kin-por Administration	<p>(a) Mr CHAN Kin-por's concern that under the proposed arrangement, a company might have already opened a bank account before the Registrar directed it to change name, and continued to use the bank account for illicit purposes despite the Registrar's direction to change name.</p> <p>(b) The Administration's response that in view of the anti-money laundering requirements, banks took a more cautious approach in opening bank accounts for new companies, and would take some time to obtain a better understanding about their customers before establishing a new bank account for them. If a company failed to comply with the Registrar's direction to change its name, the Registrar might substitute the company's name with its registration number, which would be gazetted and publicized on the website of the Companies Registry.</p> <p>(c) Mr CHAN's remark that the Administration should give more thoughts on the issue and work out more comprehensive arrangements to prevent companies with ulterior motives to make use of Hong Kong's company registration regime to conduct illicit activities.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(d) At the request of Mr CHAN Kin-por, the Administration would provide information regarding the means through which a bank could be alerted of the direction of the Registrar to change the name of a company in a timely manner.	The Administration to take action as required in paragraph 8 of the minutes.
005401 – 010818	Dr Margaret NG Administration	<p>(a) Dr NG's concern about the long time taken to make legislative proposals for the Companies Ordinance (Cap. 32) re-write exercise, and the piecemeal approach in amending bits and pieces of the Ordinance. Dr NG's further concern about the effectiveness of the proposed amendments to enhance enforcement against possible abuses by "shadow companies". Dr NG's enquiry as to why the Registrar did not cancel the registration of a company which had failed to comply with the Registrar's direction to change name pursuant to a court order. Dr NG and the Chairman's concern about the feedback from the parties concerned regarding the public consultation on the proposed amendments.</p> <p>(b) The Chairman's concern about co-operation with other jurisdictions on enforcement against abuses by "shadow companies".</p> <p>(c) The Administration's response that the Administration was taking forward the Companies Ordinance rewrite exercise according to schedule and aimed to introduce the Companies Bill by the end of 2010.</p> <p>(d) The Administration's response that during its consultation with the trademark and brand name sectors, there were different suggestions on how the company registration regime could be strengthened to tackle the "shadow company" problem, including striking a company off the register if the company failed to comply</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>with the Registrar's direction to change name. Having regard to the need to protect the interests of third parties, such as creditors, the Administration considered it more appropriate to empower the Registrar to substitute the name of a company, which had failed to comply with the Registrar's direction to change name, with its registration number rather than canceling the company's registration.</p> <p>(e) The Administration's advice that in a legal action for trademark infringement or passing off against a "shadow company", the court order usually only involved the requirement on the company to change its name. If the company failed to comply with the court order or the Registrar's direction to change its name and refrain from using the old name on its stationery and company materials, the company would have committed a criminal offence and be liable to penalties. The Government maintained close liaison with Mainland authorities on how to tackle the problem of "shadow companies".</p> <p>(f) At the request of Dr NG and the Chairman, the Administration would provide the information as per paragraph 7 of the minutes.</p>	<p>The Administration to take action as required in paragraph 7 of the minutes.</p>
010819 – 011007	Chairman	<p>(a) Invitation for deputations and submissions</p> <p>(b) Date of next meeting</p>	