

立法會
Legislative Council

LC Paper No. CB(1)1678/09-10
(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**

**Second meeting on
Tuesday, 30 March 2010, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
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 CHAN Kin-por, JP

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon CHIM Pui-chung
Hon Starry LEE Wai-king

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

Attendance by invitation : Hong Kong Small and Medium Enterprises Development Association

Dr David KAM
Chairman

The Society of Chinese Accountants and Auditors

Ms Mabel CHAN
President

The Hong Kong Institute of Chartered Secretaries

Mrs Natalia SENG
Chairman
Professional Development Committee

The British Chamber of Commerce in Hong Kong

Ms Debbie ANNELLS
Chairman of Financial Services Focus Group Committee

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 Confirmation of minutes and matters arising

(LC Paper No. CB(1)1422/09-10 —Minutes of meeting on 23 February 2010)

The minutes of the meeting held on 23 February 2010 were confirmed.

II Meeting with deputations and the Administration

Meeting with deputations

(LC Paper No. CB(1)1453/09-10(01) —Submission from Hong Kong Institute of Chartered Secretaries)

Submissions from organizations not attending the meeting

- (LC Paper No. CB(1)1453/09-10(02) —Submission from The Chinese General Chamber of Commerce
- LC Paper No. CB(1)1453/09-10(03) —Submission from The Chinese Manufacturers' Association of Hong Kong
- LC Paper No. CB(1)1453/09-10(04) —Submission from The Real Estate Developers Association of Hong Kong
- LC Paper No. CB(1)1453/09-10(05) —Submission from Ms Eirene YEUNG, Member of the Hong Kong Institute of Chartered Secretaries
- LC Paper No. CB(1)1453/09-10(06) —Submission from Tricor Services Limited
- LC Paper No. CB(1)1453/09-10(07) —Submission from The Law Society of Hong Kong)

2. The deputations presented their views on the Bills.

Meeting with the Administration

- (LC Paper No. CB(1)1453/09-10(08) —Administration's response to issues raised at the meeting on 23 February 2010
- 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. 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

- LC Paper No. CB(1)1294/09-10(01) —Letter from Assistant Legal Adviser to the Administration dated 22 February 2010 on Companies (Amendment) Bill 2010
- LC Paper No. CB(1)1343/09-10(01) —Administration's response to the letter from Assistant Legal Adviser dated 22 February 2010 on Companies (Amendment) Bill 2010
- LC Paper No. CB(1)1294/09-10(02) —Letter from Assistant Legal Adviser to the Administration dated 22 February 2010 on Business Registration (Amendment) Bill 2010
- LC Paper No. CB(1)1477/09-10(01) —Administration's response to the letter from Assistant Legal Adviser dated 22 February 2010 on Business Registration (Amendment) Bill 2010)

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

Admin

Follow-up actions to be taken by the Administration

Company and business registration

4. To address members' concern about the measures to ensure the authenticity of the information provided in on-line applications for company and business registration, in particular applications from overseas/Mainland companies, the Administration was requested to provide -

- (a) information comparing the existing and proposed arrangements for applications for company and business registration and the relevant verification procedures; and
- (b) the practices and procedures of other jurisdictions for accepting and verifying on-line applications for company and business registration.

Multiple statutory derivative action

5. In relation to the concerns of Hon Ronny TONG, Hon Audrey EU and Hon Miriam LAU regarding the proposed scope of "multiple" statutory derivative actions

(SDA) under the Companies Ordinance (Cap. 32), the Administration was requested to provide information on -

- (a) the justifications for adopting an all-inclusive approach by giving standing to any member of a "related company" as defined in Clause 14(3) to commence or intervene in proceedings on behalf of the company;
- (b) the provisions for "multiple" SDA in the relevant legislation in other common law jurisdictions;
- (c) the operation of the "multiple" SDA provisions in other common law jurisdictions with reference to relevant court cases; and
- (d) examples to illustrate why the proposed multiple SDA provisions were justified in the circumstances and how the proposed provisions could enhance the protection for minority shareholders.

Clerk Invitation for views on multiple statutory derivative action

6. Members agreed that the Clerk should write to the Hong Kong Bar Association and other relevant parties to see if they had any views regarding the proposed legislative amendments on "multiple" SDA.

III Any other business

Date of next meeting

7. The Chairman informed the meeting that the third meeting of the Bills Committee would be held on 12 April 2010.

(Post-meeting note: Subsequent to the meeting, the Chairman instructed that the third meeting should be postponed in order to allow sufficient time for the Administration to provide the information requested and for the deputations to respond to the issue on "multiple" SDA. Members were informed vide LC Paper No. CB(1)1534/09-10 on 31 March 2010 that the third meeting had been re-scheduled to be held on 20 April 2010.)

8. There being no other business, the meeting ended at 6:25 pm.

**Proceedings of the
Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010
Second meeting on Tuesday, 30 March 2010, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000351 – 000423	Chairman	Confirmation of minutes of meeting on 23 February 2010 (LC Paper No. CB(1)1422/09-10)	
Meeting with deputations and the Administration			
000424 – 000805	Chairman	Introductory remarks	
000806 – 001219	Hong Kong Small and Medium Enterprise Development Association	Presentation of views	
001220 – 001747	The Society of Chinese Accountants and Auditors	Presentation of views	
001748 – 002305	Hong Kong Institute of Chartered Secretaries	Presentation of views	
002306 – 002857	The British Chamber of Commerce in Hong Kong	Presentation of views	
002858 – 003759	Chairman Administration	In response to deputations' views and the questions raised by the Chairman, the Administration's advice that – (a) Under the existing legislation, the Registrar of Companies (the Registrar) was responsible for registration of companies, and was not obliged to assess and/or verify the applicants' particulars. (b) Applicants using false documents or information for registration were liable to criminal prosecution.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) Intermediary bodies such as company secretaries, lawyers and accountants had in fact assisted in verifying the applicants' particulars, when they provided services to the companies.</p> <p>(d) Under the proposed legislative amendments, applicants who wished to file their applications through the electronic system would, if they were individuals, first need to provide copies of their Hong Kong Identity Card or foreign passport for registration as users of the on-line system.</p> <p>(e) Overseas companies-applicants would also need to provide copies of the certificates of incorporation issued by the authorities in the place of incorporation for registration as users.</p> <p>(f) The risk of false representation involved in using the electronic application system with the registration requirement in place should be lower than that in the existing paper-based application procedures.</p> <p>(g) Phase II of the Integrated Companies Registry Information System (ICRIS II) would automatically inform the registered company concerned upon receipt of any notification of change of the company's particulars, in order to alert the company if document was submitted by unauthorized person, if any.</p> <p>(h) ICRIS II was also equipped with security features to protect information integrity.</p> <p>(i) As regards the establishment of a licensing system for trust and company service providers, the Financial Services and the Treasury Bureau and the Security Bureau were discussing the issue, which was outside the scope of the present two Bills.</p> <p>(j) The Business Registration fee would remain unchanged, although the applicant would have to pay for the company incorporation and business registration fees at the same time under the proposed one-stop service</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>system, whereas under the existing system, a company was required to obtain business registration and pay the relevant fee within one month after incorporation as a company.</p>	
003800 – 003915	Chairman Administration	<p>In response to the Chairman's enquiry regarding means to verify the authenticity of the identity of Mainland applicants, the Administration's reiteration that Mainland applicants would have to produce their personal identification documents and company registration certificates to register as users of the on-line application system.</p>	
Discussion			
003916 – 005026	Chairman Mr Ronny TONG Hong Kong Institute of Chartered Secretaries (HKICS) The Society of Chinese Accountants and Auditors (SCAA) The British Chamber of Commerce in Hong Kong (HKBCC) Administration	<p>Mr Ronny TONG's invitation for views from the deputations regarding the existing criteria and the proposed authority for the Registrar in approving/rejecting the registration of a company name.</p> <p>Representatives from the HKICS and the SCAA expressed support for the proposed legislative amendments to empower the Registrar to issue a direction to a company to change its name to tackle the problem of "shadow companies".</p> <p>In response to Mr Ronny TONG and the Chairman's invitation for views on the proposed legislative amendments on "multiple" statutory derivative actions (SDA), the representative of HKBCC remarked that HKBCC supported the proposed expansion of the scope of SDA reflected in the proposed definition of "related companies".</p>	
005027 – 010631	Chairman Ms Audrey EU Clerk HKICS Administration	<p>In response to Ms Audrey EU's enquiry, the Clerk's remark that the Law Society of Hong Kong and the Hong Kong Bar Association had been invited to give views on the Bills, although only the former had given a submission. An invitation had also been posted on the Legislative Council (LegCo) website inviting the public to give views on the Bills. The major proposals in the Bills including the proposal on "multiple" SDA were mentioned in the invitation letters and invitation notice.</p> <p>Concern of Ms Audrey EU and HKICS about the inconsistency between the simplified one-stop service for company registration and business registration, and the Government's measures in anti-money laundering and combating the</p>	

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		<p>financing of terrorism.</p> <p>The Administration's response that the proposed on-line application for company registration system was more stringent than the existing paper-based application system, as an applicant had to submit his identification documents or relevant overseas company registration certificates as documentary proof before he could register as a user. In countries where on-line applications were accepted, e.g. Singapore, the Registrar was not in a position to verify the status of the applicants, and had to rely on the financial/professional intermediaries such as accountancy firms to verify the records of their customers. Under the existing and proposed legislation, an applicant was liable to criminal prosecution if he submitted false information in his application for company/business registration.</p> <p>In response to Ms Audrey EU's concern about the proposed scope of "multiple" SDA, the Administration's explanation that in some situations the directors of a holding company were also the only shareholders of the holding company. If those directors misappropriated assets of the holding company, then there might not be any person who could take action against the directors in the name of the company. A subsidiary company of the holding company might be prejudiced by the depletion of the holding company's assets, e.g. where the subsidiary had provided guarantee for the holding company's liabilities. If creditors of the holding company pursued the subsidiary, then the subsidiary and its shareholders would be prejudiced because of the wrongdoings of directors/controllers of the holding company. The Government had made reference to the relevant statutes in other common law jurisdictions and consulted the Department of Justice in drawing up the relevant provisions for "multiple" SDA. Similar "multiple" SDA provisions had been included in the legislation in Australia and New Zealand, and the courts in Canada and Singapore were given the discretion to grant leave for "multiple" SDA.</p> <p>To address members' concern about the measures to ensure the authenticity of the information provided in on-line applications for company and business registration, in particular applications</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>from overseas/Mainland companies operating in Hong Kong, the Administration was requested to provide:</p> <p>(a) information comparing the existing and proposed arrangements for applications for company and business registration and the relevant verification procedures; and</p> <p>(b) the practices and procedures of other jurisdictions for accepting and verifying on-line applications for company and business registration.</p>	<p>The Administration to take action as required in paragraph 4 of the minutes.</p>
010632 – 011559	Mr Ronny TONG Administration	<p>Mr Ronny TONG's concern on whether a person who was not a member or a shareholder of a company should be allowed to commence or intervene in proceedings against the company. For instance, it was questionable whether a shareholder of a subsidiary company should be allowed to commence or intervene in proceedings against another subsidiary company belonging to the same holding company.</p>	
011600 – 011645	Mr CHAN Kin-por	<p>Mr CHAN Kin-por sharing the concern of the deputations and the Chairman about verification of information submitted for company registration through an electronic system.</p>	
011646 – 012116	Ms Miriam LAU Administration	<p>Ms Miriam LAU's concern on whether the public was fully aware of the implications of the proposed legislative amendments on "multiple" SDA, and whether the proposal had been thoroughly discussed among the stakeholders. Ms LAU's query whether the issue should be deferred and dealt with in the Companies Ordinance rewrite exercise so that more time could be allowed for the public to discuss the issue.</p> <p>The Administration's response that the proposed legislative amendments relating to "multiple" SDA were drawn up in the light of the ruling of the Court of Appeal and the Court of Final Appeal in the <i>Waddington Ltd v Chan Chun Hoo (2008)11 HKCFAR 370 (the Waddington case)</i>, and having regard to the advice of the Standing Committee on Company Law Reform to amend the relevant provisions in the Companies Ordinance (Cap. 32) as soon as possible so as to enhance the protection of the interests of minority shareholders. The</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Department of Justice had also given advice on the proposed legislative amendments. Under such circumstances, a separate public consultation specifically on the issue of "multiple" SDA was considered not necessary.</p>	
012117 – 013114	Mr Albert HO Administration	<p>Mr Albert HO's support for dealing with the proposal on "multiple" SDA ahead of the Companies Ordinance rewrite exercise, in order to enhance the protection for the interests of minority shareholders.</p> <p>In response to Mr HO's enquiry, the Administration's advice that under the proposed legislative amendments, the Registrar would be empowered to direct a company to change its name as a result of a court order arising from a trademark infringement or passing-off case. If a company failed to comply with the Registrar's direction to change its name, the Registrar was empowered to substitute the name of the company with the registration number of the company.</p> <p>Mr HO's concern on whether the Registrar's power in this regard would be suitably circumscribed, citing that under a temporary injunction, a company might be required to change its name even before the hearing of the passing-off case commenced, which might not be fair to the company concerned. His request for the Administration to consider his concern and remark that he would further pursue this concern during the clause-by-clause examination of the Bills.</p>	
013115 – 014229	Ms Audrey EU Administration ALA2 Ms Miriam LAU	<p>In response to Ms Audrey EU's enquiry about the rationale for the proposed scope of "multiple" SDA, the Administration's advice that when the Panel on Financial Affairs was briefed on the legislative proposals, members had raised concern about the scope of the proposed "multiple" SDA. After consulting the Standing Committee on Company Law Reform and the Department of Justice with reference to the practice in other common law jurisdictions such as Australia, New Zealand and Canada, and taking into consideration the ruling of the Court of Appeal and the Court of Final Appeal, the Administration had proposed the adoption of a wider scope for "multiple" SDA in the Bills. The Administration's elaboration that a member of a related company had to apply for</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>leave from the court to commence a SDA.</p> <p>In response to Ms Audrey EU and the Chairman's enquiry, ALA's advice that the scope of "multiple" SDA proposed by the Administration was wider than that specified in the Court of Final Appeal's ruling in relation to the <i>Waddington Ltd</i> case. Based on the Court of final Appeal's ruling, "multiple" SDA was available at common law in Hong Kong and the Court hoped that the legislative might consider extending section 168 BC of the Companies Ordinance to cover "multiple" SDA, although the scope of expansion was not specified in the ruling.</p> <p>Regarding the scope of "multiple" SDA in other common jurisdictions, ALA's advice that the proposed definition of "related company" in the Companies (Amendment) Bill 2010 was similar to that in the relevant "multiple" SDA provision in Australia. The definition of a "related company" was slightly different in New Zealand. In Canada, the term "affiliate", instead of "related company", was used. In Singapore, the court had the discretion to decide who was the proper person to commence or intervene in a proceeding on behalf of the company. The Administration could be requested to provide the provisions on "multiple" SDA in other common law jurisdictions.</p> <p>Ms Audrey EU's remark that the Administration should also provide information on the operation of the "multiple" SDA provisions in other common law jurisdictions with reference to relevant court cases.</p> <p>Ms Miriam LAU's request that the Administration should also provide examples to illustrate why the proposed "multiple" SDA provisions were justified in the circumstances and how the proposed provisions could enhance the protection of minority shareholders.</p>	<p>The Administration to take action as required in paragraph 5 of the minutes.</p>
014230 – 015259	Ms Miriam LAU Administration	<p>Ms Miriam LAU's concern about the appeal channel for a company objecting to the Registrar's direction to change the name of the company.</p> <p>The Administration's response that under section 22A of the Companies Ordinance (Cap. 32), a company to which a direction was given by the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Registrar to change its name as the name of the company gave so misleading an indication of the nature of its activities as to be likely to cause harm to the public might apply to the court to set the direction aside. Where the Registrar had rejected the registration of a company name on grounds that the company name was the same as or too like a name appearing in the index of company names, or gave an impression that it was connected with the Hong Kong SAR Government or the Central People's Government or contained words like "trust", the company might seek a review of the Registrar's decision through a judicial review.</p> <p>The Administration's further advice that under the proposed legislative amendments, a company which was directed by the Registrar to change its name on grounds that the use of the name constituted a criminal offence, or was contrary to the public interest might apply to the court to set aside the Registrar's direction.</p> <p>The Administration's further elaboration that consideration had been given to whether provisions should be included in the relevant legislation to allow a company to apply to the court to set aside the Registrar's direction to change its name in different circumstances. In view that there was a time limit after the registration of a company for the Registrar to issue direction to change the name on grounds that the name was too like the name on the company register, or was likely to give the impression that the company was connected with the Central People's Government or the HKSAR Government, the Administration had not proposed any legislative amendments to allow the company to apply to court to set aside the Registrar's direction, as the direction would not significantly affect the operation of the company. Under such circumstances, the company would have to seek a judicial review if it objected to the Registrar's direction.</p>	
015300 – 015504	Chairman	Members agreed that the Bills Committee should write to the Hong Kong Bar Association and other relevant parties to see if they had any views on the proposed amendments on SDA.	The Clerk to take action as required in paragraph 6 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
015505 – 015533	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
27 April 2010