

立法會
Legislative Council

LC Paper No. CB(1)2331/09-10
(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**

**Sixth meeting on
Monday, 31 May 2010, at 4:30 pm
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
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS
Hon Ronny TONG Ka-wah, SC

Public officers attending : **Companies (Amendment) Bill 2010**
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)

Ms Rita HO
Registry Solicitor

Miss Wendy MA
Assistant Registry Manager

Department of Justice

Miss Amy CHAN
Senior Government Counsel

Miss Emma WONG
Senior 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

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)2050/09-10 —Minutes of meeting on 3 May 2010)

The minutes of the meeting held on 3 May 2010 were confirmed.

II Meeting with the Administration

Follow-up to issues raised at the meeting on 17 May 2010

(LC Paper No. CB(1)2063/09-10(01) —List of follow-up actions arising from the meeting on 17 May 2010 prepared by the Legislative Council Secretariat)

Clause-by-clause examination of the Bills

(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

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)

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

Admin

Follow-up actions to be taken by the Administration

3. Pursuant to the discussion at the meeting, the Administration should take follow-up actions as follows-

- (a) to consider allowing applicants using the online application system to opt for receipt of hard copies of the company and business registration certificates;
- (b) after enactment of the Companies (Amendment) Bill 2010 (the Bill), to issue guidelines setting out the statutory requirements under the proposed new Part IVAAA on Communications by Company to Another Person (Other than Registrar) in an easily comprehensible manner, and to provide a draft of such guidelines for the Bills Committee's reference;
- (c) to consider specifying the time periods for the notification and website display requirements etc. under the proposed new Part IVAAA in one particular section, while making reference to other applicable provisions in the Companies Ordinance (Cap. 32) (CO), instead of stating the requirements in various sections of the CO;
- (d) to consider refining the expression of "the person's articles" in the relevant sections; and
- (e) to review the time arrangement in proposed section 168BAI to address the concern that a member or debenture holder of a company might not have sufficient time to take an action if he was required to make a request for a hard copy of a document or information 14 days in advance, and otherwise the company might provide the document or information within 21 days after receipt of the request (which might be after the deadline for the member or debenture holder to take an action).

4. Members noted that the Administration would propose Committee Stage amendments (CSAs) to the Bill to -

- (a) clarify the discretion of authorities for registration of company names, and the use of words such as "must" and "may" in various sections; and
- (b) provide for the electronic delivery of notices/documents by the Registrar of Companies in line with the Electronic Transactions Ordinance (Cap. 553).

5. The Administration suggested and members agreed that the following issues would not be dealt with in the current legislative exercise but in the context of the Companies Ordinance rewrite exercise -

- (a) review by the Administrative Appeals Board of the Registrar of Companies' directions to change names; and
- (b) the concurrent use of "must" and "shall" in various sections of the CO.

6. Members agreed that Assistant Legal Adviser 2 should review the drafting aspect of the Chinese version of the Bill, and gave his comments, if any, to the Bills Committee.

III Any other business

7. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
23 June 2010

**Proceedings of the
Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010
Sixth meeting on Monday, 31 May 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000034 – 000234	Chairman	Confirmation of minutes of meeting on 3 May 2010 (LC Paper No. CB(1)2050/09-10)	
Meeting with the Administration			
000235 – 000702	Chairman Administration Mr Albert HO	<p><u>Follow-up to issues raised at the meeting on 17 May 2010</u></p> <p>On members' concern about the dissemination of the names of newly registered companies, the Administration advised that starting from mid-May 2010, the Companies Registry had arranged to post on its website the names of companies newly registered in the previous week, and would continue to do so on a weekly basis to facilitate existing companies to check if any names of the newly registered companies closely resembled theirs.</p> <p>On Mr Albert HO's concern about the channels available for companies to seek review of the Registrar of Companies' (the Registrar) directions to change company names, and the feasibility of providing for such cases to be heard by the Administrative Appeals Board, the Administration advised that as the arrangement would involve amendments to the Administrative Appeals Board Ordinance (Cap. 442), the Director of Administration's advice would be sought.</p> <p>As it would take time to work out the relevant arrangements, the Administration suggested and members agreed that the arrangements would be dealt with in the Companies Ordinance rewrite exercise, instead of the current legislative exercise.</p>	
000703 – 001507	Dr Margaret NG Administration	<p>Dr Margaret NG asked whether the proposed arrangement of replacing a rejected company name with its registration number was accepted by the trademark practitioners.</p> <p>The Administration responded that the trademark</p>	

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		<p>practitioners had been consulted and were satisfied with the proposed arrangement, under which enforcement action could be taken against a company regarding the use of the company name without having to litigate against the shareholders of the company, and upon receipt of a court order, the Registrar could give direction to the company to change its name. If the company concerned failed to change its name within the specified period, the Registrar could replace its name on the register with its registration number, which was tantamount to deleting the company name from the register.</p> <p>Dr NG said that she was not satisfied with the proposed arrangement. She considered that if the court had ordered a company to change its name, the Companies Registry should strike off the registration of the company concerned and delete the company's name from the register, instead of just replacing the company's name on the register with its registration number.</p>	
001508 – 001740	Chairman Administration	<p>Regarding the discretion of authorities for registration of company names, and the use of words such as "must" and "may" in various relevant sections, the Administration advised that it would propose Committee Stage amendments (CSAs) to address members' concern.</p> <p>With regard to the concurrent use of "must" and "shall" in various sections of the Companies Ordinance (CO) (Cap.32), the Administration advised that the issue would be dealt with in the context of the CO rewrite exercise.</p>	<p>The Administration to propose CSAs</p> <p>The Administration to follow up the matter in the CO rewrite exercise</p>
001741 – 002217	Chairman Administration Ms Miriam LAU	<p>On the liabilities of companies failing to comply with the Registrar's direction to change their names, the Administration advised that section 93(4) of CO specified the criminal liabilities for companies which had their names substituted but continued to use their old names in business, and the criminal liabilities were applicable to various other sections of CO. As such, the Administration considered it unnecessary to add a separate provision in proposed section 22AA to specify the application of section 93(4).</p>	

Time Marker	Speaker	Subject(s)	Action Required
		In response to Ms Miriam LAU's enquiry, the Administration stated that in notifying the company of the Registrar's direction to change its name, the Registrar would advise the company concerned not to continue to use its old name in business.	
002218 – 002532	Chairman Administration	Regarding the rationale for the proposed arrangement under proposed section 346(2A)(b)(ii), the Administration advised that the arrangement was proposed for security reasons and to ensure safe delivery of the notice concerned. The Administration pointed out that based on the Electronic Transactions Ordinance (Cap. 553), the detailed electronic document delivery/storage arrangements would not need to be specified in other applicable ordinances. As such, the Administration would propose CSAs to the Bill to simply empower the Registrar to notify the relevant parties of the availability of the documents through electronic means.	The Administration to propose CSAs
002533 – 003342	Administration Chairman	<p>Regarding members' concern that the Companies Registry might be obliged under proposed section 348BA to store the certificates issued by the Registrar in its computer system indefinitely in the absence of a specified time limit for applicants to retrieve the certificates, the Administration advised that with the Electronic Transactions Ordinance (Cap. 553) in place, the CO would only specify that the Registrar would deliver the certificates to the applicants through electronic means, and CSAs would be proposed to the Bill to that effect. In actual operation, the applicants would be advised of a specified period to retrieve the certificates.</p> <p>In response to the Chairman's request, the Administration undertook to consider allowing applicants using the online application system to opt for receipt of hard copies of the company and/or business registration certificates.</p>	<p>The Administration to propose CSAs</p> <p>The Administration to take action as required in paragraph 3(a) of the minutes.</p>
003343 – 003939	Chairman Administration Ms Miriam LAU	Regarding the suggestion of providing a notification service to existing companies for checking against similar company names, the Administration advised that such a notification service would involve practical difficulties such as the need to define the criteria for selecting "similar	

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		<p>names", and the arrangement of disseminating the names of newly registered companies on the Companies Registry's website on a weekly basis should enable existing companies to check against similar company names.</p> <p>In response to Ms Miriam LAU's enquiry, the Administration stated that applicants for company registration would be requested to indicate at the outset whether he agreed to receive information/documents from the Companies Registry through electronic means. The Registry would also put in place arrangement for existing companies to opt for communications with the Registrar by electronic means.</p>	
Clause-by-clause examination of the Bill			
003940 – 010009	Ms Miriam LAU Chairman Administration	<p>Part 6</p> <p>Amendments Relating to Communications by Company to Another Person (other than Registrar of Companies)</p> <p>Division 1 — Companies Ordinance</p> <p><u>Clause 28 – Right to receive copies of balance sheets and directors' and auditors' reports</u></p> <p><u>Clause 29 – Subheading repealed</u></p> <p><u>Clause 30 – Circumstances in which listed companies may comply with section 129G by use of computer network</u></p> <p>Members raised no question on clauses 28 to 30.</p> <p><u>Clause 31 – Part IVAAA added</u></p> <p>Part IVAAA</p> <p>Communications by Company to Another Person (other than Registrar)</p> <p><i>168BAA – Interpretation</i></p> <p><i>168BAB – Minimum period specified for purposes of sections 168BAG(4) and 168BAH(6)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>168BAC – Period specified for purposes of sections 168BAG(7)(a) and 168BAH(10)(b)</i></p> <p><i>168BAD – Time specified for purposes of sections 168BAF(5)(a) and 168BAG(7)(b)</i></p> <p><i>168BAE – Address specified for purposes of sections 168BAF(2)(b) and 168BAG(3)(b)(iii)</i></p> <p><i>168BAF – Communication in hard copy form</i></p> <p><i>168BAG – Communication in electronic form</i></p> <p><i>168BAH – Communication by means of website</i></p> <p><i>168BAI – Member or debenture holder may require hard copy</i></p> <p>In relation to Ms Miriam LAU's concern about the need to facilitate companies to comply with the requirements specified in the various sections under the proposed new Part IVA on Communications by Company to Another Person (Other than Registrar), the Administration was requested to issue, after the enactment of the Bill, guidelines setting out the statutory requirements in an easily comprehensible manner. In this regard, the Chairman requested the Administration to provide a draft of such guidelines for the Bills Committee's reference.</p> <p><u>Clause 32 – Punishment of offences under this Ordinance</u></p> <p>Division 2 — Companies (Revision of Accounts and Reports) Regulation</p> <p><u>Clause 33 – Distribution of revised accounts or directors' reports</u></p> <p><u>Clause 34 – Notifying recipients of summary financial reports after revision of accounts</u></p> <p><u>Clause 35 – Documents sent under section 12 or 13 by use of computer network</u></p> <p>Members raised no question on clauses 32 to 35.</p>	<p>The Administration to take action as required in paragraph 3(b) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
010010 – 010351	Ms Miriam LAU Administration	<p><i>168BAC – Period specified for purposes of sections 168BAG(7)(a) and 168BAH(10)(b)</i></p> <p>Ms Miriam LAU requested the Administration to consider refining the expression of "the person's articles" in the relevant sections.</p>	The Administration to take action as required in paragraph 3(d) of the minutes.
010352 – 010824	Mr Alan LEONG Administration Chairman	Mr Alan LEONG expressed concern about the need to specify in various sections of the CO the time periods for the notification and website display requirements, etc. under proposed new part IVAAA. He requested the Administration to consider setting out the time periods in a particular section instead, while making reference to other applicable provisions in the CO.	The Administration to take action as required in paragraph 3(c) of the minutes.
010825 – 011947	ALA2 Administration Chairman Ms Miriam LAU	<p><i>168BAI – Member or debenture holder may require hard copy</i></p> <p>ALA2 pointed out that a member or debenture holder of a company might not have sufficient time to take an action if he was required to make a request for a hard copy of a document or information 14 days in advance, as otherwise the company might provide the document or information within 21 days after receipt of the request (which might be after the deadline for the member or debenture holder to take an action). Ms Miriam LAU echoed ALA2's concern.</p> <p>The Chairman requested the Administration to review the time arrangement in proposed section 168 BAI.</p>	The Administration to take action as required in paragraph 3(e) of the minutes.
011948 – 013349	Administration Chairman	<p>Part 7</p> <p>Amendments Relating to Paperless Holding and Transfer of Shares and Debentures</p> <p>Division 1 — Companies Ordinance</p> <p><u>Clause 36 – Interpretation</u></p>	

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		<p><u>Clause 37 – Nature of shares</u></p> <p><u>Clause 38 – Numbering of shares</u></p> <p><u>Clause 39 – Transfer not to be registered except on production of instrument of transfer</u></p> <p><u>Clause 40 – Transfer by personal representative</u></p> <p><u>Clause 41 – Duties of company with respect to issue of certificates</u></p> <p><u>Clause 42 – Certificate to be evidence of title</u></p> <p><u>Clause 43 – Register of members</u></p> <p><u>Clause 44 – Register to be evidence</u></p> <p><u>Clause 45 – Provisions relating to acquisition of minority shares after successful take-over offer</u></p> <p><u>Clause 46 – Punishment of offences under this Ordinance</u></p> <p>Division 2 — Companies (Winding-up) Rules</p> <p><u>Clause 47 – Forms</u></p> <p>Division 3 — Securities and Futures Ordinance</p> <p><u>Clause 48 – Rules by Commission</u></p> <p>Members raised no question on clauses 36 to 48.</p>	
013350 – 013833	Ms Miriam LAU Administration	In response to Ms Miriam LAU's enquiry, the Administration remarked that the provisions concerning the handling of scripless securities would only apply to listed corporations.	
013834 – 014203	Administration	<p>Part 8</p> <p>Miscellaneous Amendments</p> <p><u>Clause 49 – Power to dispense with certain words in name of charitable and other companies</u></p> <p><u>Clause 50 – Power of Registrar to require company</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>to change misleading or offensive name, etc.</u></p> <p><u>Clause 51 – Non voting shares and shares with different voting rights</u></p> <p><u>Clause 52 – Approval of company required for allotment of shares by directors</u></p> <p><u>Clause 53 – Power to close register of members and register of debenture holders</u></p> <p><u>Clause 54 – Register to be evidence</u></p> <p><u>Clause 55 – Interpretation of provisions as to prospectuses</u></p> <p><u>Clause 56 – Power to make regulations</u></p> <p><u>Clause 57 – First Schedule amended</u></p> <p>Members raised no question on clauses 49 to 57.</p>	
014204 – 014846	Chairman ALA2 Ms Miriam LAU Administration	<p>ALA2 pointed out that in a Legal Notice gazetted on 28 May 2010 (namely LN No. 69 of 2010) relating to the amendment of certain forms in a subsidiary legislation, the words "他/她" were used to replace "他" as the Chinese rendition of "he/ she" whereas no similar amendment was proposed in the Bill. Ms Miriam LAU said that it was not necessary to use "he/she" because of Chapter 1 of the Laws of Hong Kong stating that words and expressions importing the masculine gender included the feminine and masculine genders. However, Ms LAU was of the view that if the Administration insisted to use "he/she" in the English version, "他/她" should be used as the Chinese rendition.</p> <p>The Administration responded that the drafting practice now required that opportunity was to be taken to use gender-neutral terms or avoid using merely a specific gender pronoun. Gender-neutrality had no significant implications for Chinese drafting. If the English text used a noun to achieve gender neutrality (e.g. "Director" instead of "he"), the Chinese text could follow suit. However, the character "他" was more</p>	

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		<p>gender-neutral compared to "he". For example, "他們" was used for a group of people of both sexes. Therefore, if no interpretation problem was likely to arise in the particular context, "他們" and "他" might continue to be used as they were suitable and concise. The drafting practice was only a matter of change of style, having regard to the practice in other jurisdictions like Australia, Canada, New Zealand and Ireland. The legal meaning of the relevant provisions was not affected.</p> <p>Noting that members had no comment on the proposed "long title" and "short title" of the Bill and the commencement date arrangement, the Chairman said that the Bills Committee completed scrutiny of the Companies (Amendment) Bill 2010 and noted that the Administration would propose CSAs as discussed.</p> <p>Members agreed that ALA2 should review the drafting aspect of the Chinese version of the Bill, and gave his comments, if any, to the Bills Committee.</p>	<p>ALA2 to take action.</p>
014847 – 014904	Chairman	Date of next meeting	