

立法會
Legislative Council

LC Paper No. CB(1)2512/09-10
(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**

**Eighth meeting on
Thursday, 10 June 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
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 CHIM Pui-chung
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP
Hon Alan LEONG Kah-kit, SC

Member absent : Hon Albert HO Chun-yan

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)

Miss Shirley KWAN
Principal Assistant Secretary for Financial Services and the
Treasury (Treasury)

Miss Fiona CHAU
Assistant Secretary for Financial Services and the Treasury
(Treasury)

Companies Registry

Ms Elizabeth MO
Deputy Principal Solicitor
(Company Law Reform)

Ms Rita HO
Registry Solicitor

Miss Wendy MA
Assistant Registry Manager

Inland Revenue Department

Mrs Brenda LEE
Assistant Commissioner

Mr Eric WAN
Senior Assessor

Department of Justice

Ms Francoise LAM
Senior Assistant Law Draftsman (Acting)

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 YICK Wing-kin
Assistant Legal Adviser 8

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)2215/09-10 —Minutes of meeting on 17 May 2010)

The minutes of the meeting held on 17 May 2010 were confirmed.

II Meeting with the Administration

(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)2214/09-10(02) —List of follow-up actions arising from the meeting on 7 June 2010 prepared by the Legislative Council Secretariat

LC Paper No. CB(2)512/09-10(04) —Administration's paper on "Drafting of Legislation")

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

Committee Stage amendments (CSAs)

3. The Bills Committee examined the CSAs proposed by the Administration in relation to the Companies (Amendment) Bill 2010 and the Business Registration (Amendment) Bill 2010 tabled at the meeting. The Bills Committee agreed to the proposed CSAs, and requested the Administration to provide written confirmation on the two issues set out in paragraphs 4 and 5 below.

(Post-meeting note: The Administration's papers on its proposed CSAs were issued to members vide LC Papers No. CB(1)2214/09-10(01) and CB(1)2286/09-10(01) on 17 June 2010.)

Follow-up actions to be taken by the Administration

4. In relation to members' concern on whether the word "may" or "must" should be used in the proposed section 22A(1A) in clause 11(2) of the Companies (Amendment) Bill 2010, the Administration undertook to seek legal advice and confirm the appropriate word to be used in the section.

5. Regarding members' concern on whether the word "需" or "須" should be used in the proposed section 4(3) in clause 4(3) of the Business Registration (Amendment) Bill 2010, the Administration was requested to consider the appropriate word to be used in the section.

(Post-meeting note: The Administration's paper confirming its position on the above issues was issued to members vide LC Paper No. CB(1)2269/09-10(01) on 15 June 2010.)

Way forward

6. The Bills Committee completed scrutiny of the Bills. The Administration indicated that it would give notice for resumption of the Second Reading debate on the Bills at the Council meeting on 7 July 2010.

7. The Chairman said that he would make a verbal report on the deliberations of the Bills Committee to the House Committee on 18 June 2010, and the written report of the Bills Committee would be issued thereafter. The deadline for giving notice on CSAs to the Bills would be 26 June 2010.

III Any other business

8. There being no other business, the meeting ended at 5:30 pm.

Council Business Division 1
Legislative Council Secretariat
9 July 2010

**Proceedings of the
Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010
Eighth meeting on Thursday, 10 June 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000319 – 000535	Chairman	Confirmation of minutes of meeting on 17 May 2010 (LC Paper No. CB(1)2215/09-10)	
Meeting with the Administration			
000536 – 001348	Administration	The Administration's briefing on its proposed CSAs to the Companies (Amendment) Bill 2010.	
<i>Administration's proposed CSAs to Companies (Amendment) Bill 2010</i>			
001349 – 003331	Mr CHAN Kin-por Administration Chairman ALA2 Dr Margaret NG	<p><u>Proposed CSAs to clauses 10 and 11</u></p> <p>Mr CHAN Kin-por was concerned that in certain sections the word "shall" was replaced by "may" whilst in other sections the word "shall" was replaced by "must".</p> <p>ALA2 pointed out that Ms Miriam LAU had in a previous meeting expressed concern that in proposed section 22(3A) and 22A(1A), the word "may" was used for the Registrar of Companies (the Registrar) to direct a company to change its name, when the company "must" not be registered by certain names.</p> <p>The Administration responded that at the time of registration of a company name, the Companies Registry's computer system might not be able to identify that the company name was one which would likely give the impression that the company was connected with the Central People's Government or the HKSAR Government requiring approval by the Registrar for the use of the name. If after registration, the company name was found in subsequent Companies Registry's manual checking to be such kind of a name, the Registrar would decide whether the company should be allowed to use the name taking into consideration relevant factors, and hence the word "may" was used to provide the Registrar with the discretion.</p> <p>Dr Margaret NG opined that the use of the word "may" in proposed section 22A(1A) was more appropriate, as it was a provision to empower the Registrar to give change-of-name directions, whereas the word "must" would imply the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>imposition of a duty on the Registrar to do something, and there was no mention of any sanction if the Registrar failed to perform the duty.</p> <p>The Administration responded that further legal advice would be sought regarding the use of the word "may" or "must" in proposed sections 22(3A) and 22A(1A).</p>	<p>The Administration to take action.</p>
003332 – 003558	Ms Miriam LAU ALA2 Administration	<p><u>Proposed CSAs to clauses 24 and 27</u></p> <p>Regarding Ms Miriam LAU's concern expressed at a previous meeting about the notification and storage arrangements specified in the proposed sections 346(2A) and 348BA(2), the Administration advised that the details of the arrangements would be implemented as administrative arrangements, and, based on the Electronic Transactions Ordinance (Cap. 553), the arrangements would not need to be specified in other applicable ordinances. As such, the Administration would move CSAs to amend the proposed sections 346(2A) and 348BA(2) to simply empower the Registrar to serve a notice and issue a certificate respectively through electronic means.</p>	
003559 – 004116	Administration Chairman	<p><u>Proposed CSA to proposed 168BAI in Clause 31</u></p> <p>The Administration briefed members on the proposed CSAs.</p>	
<i>Administration's proposed CSAs to Business Registration (Amendment) Bill 2010</i>			
004117 – 004419	Chairman Administration	<p>The Administration briefed members on the proposed CSAs in relation to the Business Registration (Amendment) Bill 2010, a copy of which was tabled at the meeting.</p>	
004420 – 004701	ALA8 Administration	<p><u>Proposed CSAs to clause 4</u></p> <p>In response to ALA8's enquiry regarding proposed new section 4(3B), the Administration advised that all information on the incorporation forms and company registration forms was available for public inspection as provided under the Companies Ordinance.</p>	
004702 – 005242	ALA8 Administration Ms Miriam LAU	<p>While remarking that the drafting aspect of the Chinese version of the Business Registration (Amendment) Bill 2010 was in order, ALA8 pointed out that the word "需" was used in the proposed section 4(3) instead of the word "須" in the original</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>section, and the meaning of the two Chinese words was slightly different, in that the word "需" implied a need whereas the word "須" implied a duty. ALA8 pointed out that the Administration responded to a query by Mr Alan LEONG at a previous meeting that changing the word "shall" in the original section 4(3) to "may" in the proposed section 4(3) was only a change of drafting style in English and would not change the meaning of the word. Hence the Administration might consider to keep using the original Chinese word "須" in this section. Ms Miriam LAU opined that if a legal duty was implied, the use of the word "須" should be more appropriate.</p> <p>The Administration responded that there was no intention to alter the legal effect with the change in the use of word. The Administration undertook to further consider the appropriate Chinese word to be used in the provision.</p>	<p>The Administration to take action.</p>
005243 – 005401	Chairman Administration	<p>In response to the Chairman's enquiry regarding Dr Philip WONG's concern about the checking of the company addresses, the Administration remarked that the Companies Registry's computer system would build in functions for checking the address provided by applicants/companies.</p>	
005402 – 005519	Chairman Clerk Administration	Legislative timetable	