

立法會
Legislative Council

LC Paper No. CB(1)1880/10-11

(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of second meeting held on
Monday, 14 March 2011, at 11:00 am
in the Chamber of the Legislative Council Building**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Starry LEE Wai-king, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, GBS, JP

Public officers attending : **Agenda item III**
Mr John LEUNG, JP
Deputy Secretary for Financial Services and the Treasury (Financial Services)

Mr Nick AU YEUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies

Ms Phyllis MCKENNA
Deputy Principal Solicitor (Company Law Reform)

Miss Selina LAU
Senior Government Counsel

Mr Ken FUNG
Government Counsel

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sharon CHUNG
Senior Council Secretary (1)4

Mr Simon CHEUNG
Senior Council Secretary (1)9

Ms Silvia YAU
Clerical Assistant (1)4

I Confirmation of minutes

(LC Paper No. CB(1) 1524/10-11 -- Minutes of meeting held on 25 February 2011)

The minutes of the meeting held on 25 February 2011 were confirmed.

II Election of Deputy Chairman

2. The Chairman said that having regard to his work schedule and other commitments, he considered it necessary for the Bills Committee to have a Deputy Chairman to help with the work. There being no objection from members, he invited nominations from members for the position of Deputy Chairman.

3. Ms Starry LEE was nominated by Mr CHAN Kam-lam and the nomination was seconded by Mr WONG Ting-kwong. Mr WONG said that Ms LEE had accepted the nomination. Mr Ronny TONG nominated Mr James TO. Mr TO declined the nomination. There being no other nomination, Ms Starry LEE was elected Deputy Chairman of the Bills Committee.

4. Mr CHIM Pui-chung advised that he would withdraw from the Bills Committee as he had a lot of other commitments.

(Post-meeting note: Mr CHIM's letter to the Chairman dated 14 March 2011 on his withdrawal from the Bills Committee was circulated to members vide LC Paper No. CB(1)1598/10-11 on 15 March 2011.)

III Meeting with the Administration

5. The Bills Committee deliberated its work plan and met with the Administration (Index of proceedings attached at **Appendix**).

Discussion on work plan

(LC Paper No. CB(1)1522/10-11(01) -- Administration's paper on proposed work plan)

6. Members endorsed the proposed work plan and agreed that the plan be subject to regular review and necessary adjustments in the light of progress made by the Bills Committee.

Briefing by the Administration on the Bill

(LC Paper No. CB(1)1522/10-11(02) -- Administration's paper on overall policies of the Companies Ordinance rewrite)

Follow-up actions to be taken by the Administration

7. The Administration was requested to provide information on the Standing Committee on Company Law Reform ("SCCLR") covering the following aspects:

- (a) The composition of SCCLR, the sectors from which the members are drawn from, and the current membership of the Committee; and
- (b) The role and work of SCCLR in the Companies Ordinance rewrite exercise.

Dates of forthcoming meetings

8. The Chairman reminded members that the third meeting would be held on Tuesday, 29 March 2011, at 9:30 am to meet with the Administration. Two meetings with deputations were scheduled for Saturday, 9 and 16 April 2011, from 9:30 am to 12:45 pm. Other meetings with the Administration in April and the first half of May 2011 were scheduled for 14 April, 28 April, 6 May and 13 May.

(Post-meeting note: The notice of meeting for the meetings in April and May were issued to members vide LC Paper No. CB(1)1594/10-11 on 15 March 2011. The meeting scheduled for the 14 April 2011 was subsequently re-scheduled to 18 April 2011.)

IV Any other business

9. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 1
Legislative Council Secretariat
12 April 2011

Bills Committee on Companies Bill

**Proceedings of second meeting
on Monday, 14 March 2011, at 11:00 am
in the Chamber of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| 000001 - 000339 | Members Chairman | <u>Confirmation of minutes of meeting</u> <u>on 25 February 2011</u> (LC Paper No. CB(1) 1524/10-11) | |
| 000340 - 000538 | Chairman Mr CHAN Kam-lam Mr WONG Ting-kwong Mr Ronny TONG Mr James To | <u>Election of Deputy Chairman</u> | |
| 000539 - 000603 | Mr CHIM Pui-chung | Mr CHIM Pui-chung's advice that he would withdraw from the Bills Committee | |
| 000604 - 001336 | Chairman Administration | <u>Discussion on work plan</u> (LC Paper No. CB(1)1522/10-11(01)) The Administration's briefing on the proposed work plan | |
| 001337 - 002033 | Mr CHAN Kam-lam Administration | Mr CHAN Kam-lam's view that it was a feasible approach for the Bills Committee to deliberate major policy issues on each of the 10 groupings covering the 21 parts of the Bill before conducting clause-by-clause examination of the provisions; and his enquiries about whether there were other approaches in scrutinizing the Bill in order to save time and whether the Administration had a contingency plan in the event that scrutiny of the Bill could not be | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>completed within the fourth Legislative Council ("4th LegCo")</p> <p>The Administration's response as follows -</p> <p>(a) the Administration had considered a topical approach as an alternative for studying the Bill under which the Bills Committee would deliberate on the policy aspect and examine the relevant clauses in each grouping one after the other. This approach was not preferred as it would be difficult for members to get a clear overall picture of the Bill since different parts of the Bill were inter-related and it would be difficult for the Administration to prepare the consequential amendments and committee stage amendments ("CSAs") should there be adjustment in policy after deliberation by members;</p> <p>(b) given that views and suggestions from the public collected in past consultations had been incorporated in the Bill as appropriate; once the Bills Committee had completed discussion on the policy issues, the clause-by-clause examination of provisions could progress smoothly and quickly; and</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>(c) it was the Administration's aim to complete scrutiny of the Bill within 4th LegCo; to achieve this aim, it was envisaged that the Bills Committee would have to meet frequently; the Administration would make every effort and provide all necessary assistance to facilitate members in studying the Bill</p> | |
| 002034 - 002439 | <p>Mr Ronny TONG Chairman</p> | <p>Mr Ronny TONG's view that he was optimistic about completing the scrutiny of the Bill within 4th LegCo; and his suggestions that in order to facilitate the work of the Bills Committee,</p> <p>(a) the Administration should provide comprehensive information on the controversial issues relating to the Bill, such as those raised by the Standing Committee on the Companies Law Reform ("SCCLR"), and concerned parties, and encountered by company law reforms undertaken by overseas jurisdictions, as well as responses of the Administration and overseas jurisdictions in addressing the issues or concerns; and</p> <p>(b) the Bills Committee should defer consideration of technical or drafting issues to the clause-by-clause examination stage</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>The Chairman's advice that the Bills Committee had scheduled two meetings on 9 and 16 April 2011 with deputations for views on the Bill; and if members had suggestions on organizations to be invited, they could inform the Secretariat</p> <p>The Chairman's request for the Administration to provide discussion papers covering two groups of subjects at each time, so as to provide sufficient time for consideration by members and to facilitate the Bills Committee's discussion in an efficient manner</p> | <p>The Admin. to note the request</p> |
| 002440 - 003053 | Prof Patrick LAU Administration | <p>Prof Patrick LAU's view that it was important to have consensus over controversial issues; and his enquiries about the composition of SCCLR, including whether there were representatives from the building sector, and whether SCCLR had discussed the concerns raised by different sectors</p> <p>The Administration's reply that –</p> <ul style="list-style-type: none"> (a) SCCLR was the principal body advising on matters relating to the Companies Ordinance ("CO") rewrite; and (b) five advisory/working groups had been established for advice on specific areas of the rewrite exercise, and members of these advisory/working groups came from various sectors, such as accounting, legal, business | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | community (which included members from building and construction companies), company secretaries and academics, etc. | |
| 003054 - 003459 | Ms Audrey EU Chairman | <p>Ms Audrey EU's view that –</p> <ul style="list-style-type: none"> (a) concerned parties might have different views on the technical issues in the Bill as these concerned the daily operation of companies in Hong Kong; (b) the Committee might be in a better position to assess the time required for scrutinizing the Bill after hearing deputations' views; (c) the Administration should make preparation for the situation that scrutiny of the Bill could not be completed within 4th LegCo, including working out priorities of proposals that should first be taken forward in the event that the Administration had to excise controversial proposals from the Bill; and (d) the Committee should study the Bill carefully and seriously, not in a hasty manner <p>The Chairman's advice that the Bill Committee might need to review its work plan after the public hearings in April</p> | |

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| 003500 004028 | Mr Abraham SHEK Administration Chairman | <p>Mr Abraham SHEK's view that –</p> <p>(a) the Bill was an important legislation with far-reaching impacts on the economic development of Hong Kong and hence warranted careful examination by members;</p> <p>(b) the proposed work plan was aggressive and over-optimistic; and</p> <p>(c) as the Bill involved controversial proposals, the Secretary for Financial Services and the Treasury ("S for FS") or the Permanent Secretary for Financial Services and the Treasury (Financial Services) ("PS for FS") should attend meetings of the Bills Committee</p> <p>The Administration's response that –</p> <p>(a) the Administration had consulted stakeholders and the public on the proposed amendments and policy changes, and their views had been taken into account in formulating the various proposals in the Bill;</p> <p>(b) S for FS and PS for FS would attend meetings of the Bills Committee as and when necessary, and they would be briefed and updated on the progress of the scrutiny work regularly; and</p> <p>(c) it would be too early to consider excising any proposals from the</p> |
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| | | <p>Bill; in any case, as the CO rewrite exercise was taken forward in a comprehensive manner, each of the 21 parts of the Bill was important and a number of the parts were inter-related, thus making it difficult for the Administration to consider excising any of the proposals from the Bill</p> <p>The Chairman's request for the Administration to consider Mr SHEK's view about the attendance of S for FS and PS for FS at the Bills Committee's meetings</p> | The Admin. to note the request |
| 004216 - 004557 | Mr Andrew LEUNG | <p>Mr Andrew LEUNG's view that –</p> <ul style="list-style-type: none">(a) the Bill was important for the business community of Hong Kong and members should scrutinize the Bill in a prudent manner;(b) although public consultation on the Bill had been conducted, there were no consensus on some controversial issues;(c) the Bills Committee might need to invite deputations for views on specific proposals in the Bill which involved public controversies; and(d) the Administration should start working out a contingency plan to cater for the situation that the scrutiny of the Bill could not be completed within 4th LegCo. It would be undesirable to waste members' efforts when the Bill | |

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| | | had to lapse as the scrutiny could not be completed by the end of 4 th LegCo | |
| 004558 - 004850 | Mr Abraham SHEK Chairman Administration | <p>Mr Abraham SHEK's stress that the Bills Committee should allow reasonable time for each deputation to express its views on the Bill</p> <p>The Chairman's advice that Mr SHEK's view would be taken into account when making arrangements for meeting with delegations</p> <p>The Administration's response that –</p> <p>(a) three rounds of public consultation on the proposals in the Bill were conducted in 2007 and 2008, and draft clauses of the Bill were also published for further public consultation in 2009 and 2010; and</p> <p>(b) the consultation had covered the public and relevant stakeholders including business associations, professional bodies, and academics, etc.</p> | |
| 004851- 005613 | Mr Jeffrey LAM Administration Chairman Mr Abraham SHEK | <p>Mr Jeffrey LAM's query that the Administration had not accepted the majority views expressed on some proposals, and his enquiry on –</p> <p>(a) the handling of views collected during public consultation; and</p> <p>(b) the membership of SCCLR</p> | |

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| | <p>The Administration's reply that –</p> <p>(a) it had conducted three rounds of consultation before drafting the Bill and two rounds of consultation on the draft clauses of the Bill;</p> <p>(b) the Administration had received diverse views on some proposals, and it had conducted careful analyses of the views and endeavoured to formulate the best proposals balancing the interests of various stakeholders;</p> <p>(c) SCCLR was chaired by a Senior Counsel, its members included individuals from the relevant sectors or professions, and representatives from relevant Government departments or regulators such as the Financial Services and the Treasury Bureau, the Companies Registry, the Department of Justice, the Securities and Futures Commission, and the Hong Kong Exchanges and Clearing Limited; and</p> <p>(d) the Administration would provide information to the Bills Committee on the work of SCCLR in the CO rewrite and SCCLR's membership list</p> <p>Mr Abraham SHEK's view that the Administration's papers for the Bills Committee should include information on public views collected on various policy issues, the views which had been accepted</p> | The Admin. to take action as in paragraph 7 of the minutes |
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| | | or refused by the Administration and the concerned reasons | |
| 005614 - 010342 | Administration | <p><u>Briefing by the Administration on the Bill</u> (LC Paper No. CB(1)1522/10-11(02))</p> <p>The Administration's briefing on the overall policies of the CO rewrite</p> | |
| 010343 - 011243 | Mr Abraham SHEK Mr Jeffrey LAM Senior Assistant Legal Adviser 3 Deputy Chairman Administration | <p>Mr Abraham SHEK's reservation on the Administration's proposal to deal with the consequential amendments to the current CO and other enactments arising from the Bill through CSAs</p> <p>Senior Assistant Legal Adviser 3 explained that the Administration's original proposal was to submit the consequential amendments and other enactments in a separate bill later in 2011 and another bills committee might need to be set up to scrutinize it. If the consequential amendments and other enactments were to be introduced as CSAs to the Bill, they could be scrutinized by the Bills Committee. The consequential amendments should not involve changes in policy.</p> <p>Mr Abraham SHEK's remark that he would accept the Administration's approach provided that such CSAs did not involve changes in policy</p> | |

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| | <p>Mr Jeffrey LAM's view that –</p> <p>(a) some proposals supported by majority of the stakeholders in previous consultations had not been included in the Bill;</p> <p>(b) the Administration should listen carefully to the views of concerned parties; and</p> <p>(c) CSAs to be introduced, if any, should reflect the consensuses of the Bills Committee</p> <p>The Deputy Chairman's view that the Administration's proposal of introducing consequential amendments by way of CSAs was acceptable, so long as the Administration would provide the details of the CSAs at an early stage to allow sufficient time for members' deliberation</p> <p>The Deputy Chairman's enquiry on whether the Bill included provisions relating to the appointment and number of independent non-executive directors of a company</p> <p>The Administration responded that the appointment and number of independent non-executive directors were not covered in the Bill. These aspects were regulated under the Listing Rules governing listed companies and the Hong Kong Exchanges and Clearing Limited had conducted a consultation on the subject.</p> | |
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| 011244 - 011412 | Chairman | <p><u>Dates of forthcoming meetings</u></p> <p>The Chairman's advice that –</p> <p>(a) the Bills Committee would discuss at the next meeting the Annex to the paper (LC Paper No. CB(1)1522/10-11(02)) which concerned modernization of drafting in the Bill;</p> <p>(b) the dates of forthcoming meetings were 29 March, 14 and 28 April, 6 and 13 May; and</p> <p>(c) the Bills Committee would work out a meeting schedule up to end of July 2011</p> | |
| 011413 - 011455 | Mr Abraham SHEK Chairman | <p>Mr Abraham SHEK's remark that the Bills Committee should avoid clash in meetings with other committees such as the Bills Committee on Competition Bill</p> <p>The Chairman's response that arrangements had been made to avoid clash in meetings with other committees including the Bills Committee on Competition Bill and the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products which had substantial overlaps in memberships with the Bills Committee</p> | |