

立法會
Legislative Council

LC Paper No. CB(1)1838/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the fourth meeting held on
Saturday, 9 April 2011, at 9:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Starry LEE Wai-king, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
- Public officers attending** : **Agenda item I**
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

Mrs Karen HO
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Mr Tim CHUNG
Solicitor (Company Law Reform)
Companies Registry

**Attendance by
invitation**

: Agenda item I

Hong Kong Small and Medium Enterprises
Association

Mr Rico CHIU
1st Vice-President

Hong Kong Small and Medium Enterprises
Development Association

Mr Jaysen TSANG Nam
Vice-President

Hong Kong Small & Medium Enterprises General
Association

Mr Alec HO Yat-wan
Vice Chairman

The Law Society of Hong Kong

Mr Lewis LUK
Member, The Law Society's Company and Financial
Law Committee

The Institute of Certified Management Accountants
(Hong Kong Branch)

Mr Allen WONG
Chief Executive

The Society of Trust and Estate Practitioners (HK)
Ltd.

Ms Alison ASOME
Member

The Hong Kong Institute of Directors

Dr Kelvin WONG
Chairman

The Chamber of Hong Kong Listed Companies

Mr Mike WONG
Chief Executive Officer

PCCW Minority Share Holder Alliance

Mr LEUNG Kwok-keung
Convenor

Investor Interest Concern Group

Mr Danny CHAN
Convenor

ASIAN Citrus Victims Alliance

Mr NG King-ching
Society Principal

The Investors Protection Association

Mr LUI Chi-wah
Chairman

1189 Rosedale Hotel (Former Wing On Travel)
Minority Shareholder Alliance

Mr CHENG Kam-ming
Convenor

Minority Shareholder's Interest Concern Group

Mr Henry CHAN
Convenor

Individual

Ms Alice TAM Yuk-kuen

公司條例草案關注組

丘淑明女士
主席

Economic Synergy

Mr Henry LUK
Member

Seanew Media Company Limited

Mr Peter LAW
Assistant Operations Manager

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

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

Mr Simon CHEUNG
Senior Council Secretary (1)9

Ms Christina SHIU
Legislative Assistant (1)4

Action

I Meeting with deputations and the Administration

Deputations attending the meeting

Hong Kong Small and Medium Enterprises Association
(LC Paper No. CB(1)2079/10-11(03))

Hong Kong Small and Medium Enterprises Development Association

Hong Kong Small & Medium Enterprises General Association
(LC Paper No. CB(1)1805/10-11(01))

The Law Society of Hong Kong
(LC Paper No. CB(1)1805/10-11(02))

The Institute of Certified Management Accountants (Hong Kong Branch)
(LC Paper No. CB(1)1805/10-11(03))

The Society of Trust and Estate Practitioners (HK) Ltd.

The Hong Kong Institute of Directors
(LC Paper No. CB(1)1864/10-11(01))
(LC Paper No. CB(1)2928/10-11(14))

The Chamber of Hong Kong Listed Companies
(LC Paper No. CB(1)1805/10-11(04))

PCCW Minority Share Holder Alliance

Investor Interest Concern Group

Asian Citrus Victims Alliance
(LC Paper No. CB(1)1864/10-11(02))

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The Investors Protection Association
(LC Paper No. CB(1)1805/10-11(06))

1189 Rosedale Hotel (Former Wing On Travel) Minority Shareholder
Alliance

Minority Shareholder's Interest Concern Group

Ms Alice TAM Yuk-kuen

公司條例草案關注組
(LC Paper No. CB(1)2079/10-11(01))

Economic Synergy
(LC Paper No. CB(1)1864/10-11(03))

Seanew Media Company Limited

***Submissions from organizations/individuals not attending the
meeting***

(LC Paper No. CB(1)1805/10-11(07) -- Submission from Mayer
Brown JSM dated
29 March 2011

LC Paper No. CB(1)1805/10-11(08) -- Submission from
Mr YEUNG Wai-sing,
Eastern District Council
member, dated
29 March 2011

LC Paper No. CB(1)1805/10-11(09) -- Submission from The
Chinese Manufacturers'
Association of Hong Kong
dated 29 March 2011

LC Paper No. CB(1)1805/10-11(10) -- Submission from
Association of Chartered
Certified Accountants Hong
Kong dated 30 March 2011

LC Paper No. CB(1)1805/10-11(11) -- Submission from The Hong
Kong Institute of Chartered
Secretaries dated
30 March 2011

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- LC Paper No. CB(1)1805/10-11(12) -- Submission from College of Business, City University of Hong Kong dated 31 March 2011
- LC Paper No. CB(1)1805/10-11(13) -- Submission from The Real Estate Developers Association of Hong Kong dated March 2011
- LC Paper No. CB(1)1805/10-11(05) -- Submission from Hutchison Whampoa Limited dated 1 April 2011
- LC Paper No. CB(1)1805/10-11(14) -- Submission from The Hong Kong Association of Banks dated 1 April 2011
- LC Paper No. CB(1)1805/10-11(15) -- Submission from Dr Surya DEVA, Associate Professor, School of Law, City University of Hong Kong dated 1 April 2011
- LC Paper No. CB(1)1805/10-11(16) -- Submission from Cheung Kong (Holdings) Limited dated 1 April 2011
- LC Paper No. CB(1)1805/10-11(17) -- Submission from Hong Kong General Chamber of Commerce dated 4 April 2011
- LC Paper No. CB(1)1834/10-11(01) -- Submission from Hsin Chong Construction Group Ltd. dated 4 April 2011
- LC Paper No. CB(1)1864/10-11(01) -- Submission from The Hong Kong Institute of Directors dated 9 April 2011
- LC Paper No. CB(1)1864/10-11(02) -- Submission from Asian Citrus Victims Alliance dated 9 April 2011
- LC Paper No. CB(1)1864/10-11(03) -- Submission from Economic Synergy dated April 2011)

The Bills Committee received views from the deputations and exchanged views with them and the Administration on various subjects of the Companies Bill (Index of proceedings attached at the **Appendix**).

Action

II Any other business

Date of next meeting

2. The Chairman advised members that the next meeting of the Bills Committee would be held on Monday, 18 April 2011, at 10:45 am to meet with the Administration.
3. There being no other business, the meeting ended at 12:26 pm.

Council Business Division 1
Legislative Council Secretariat
11 May 2012

Bills Committee on Companies Bill

**Proceedings of the fourth meeting
on Saturday, 9 April 2011, at 9:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001-000816	Chairman	Opening remarks and arrangements for the meeting	
<i>Presentation of views of deputations</i>			
000817-000854	Hong Kong Small and Medium Enterprises Development Association ("HKSMEDA")	HKSMEDA would provide a written submission to the Bills Committee after the meeting	
000855-001547	Hong Kong Small & Medium Enterprises General Association ("HKSMEGA")	<p>HKSMEGA's views as follows --</p> <p>(a) There were valid reasons and genuine need for companies to operate with corporate directors and the requirement for private companies to appoint natural persons as their directors would reduce flexibility in the operation of the companies.</p> <p>(b) Each corporate director should be required to appoint a natural person as its authorized representative who would perform duties required of a corporate director. The natural person directors should only be liable for criminal offence committed by the company, while civil liabilities of the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>company should be borne by the corporate directors.</p> <p>(c) Support retaining the headcount test.</p> <p>(d) Public companies should be required to appoint independent non-executive directors. The responsibilities of such directors should be confined to matters which had been discussed and decided at the board of directors meetings, and such directors should only be liable for criminal offence committed by the company.</p> <p>(e) The Companies Bill ("CB") should contain provisions to facilitate deregistration of companies limited by guarantee.</p> <p>(f) The Companies Register should not contain personal information of directors, e.g. addresses and complete Hong Kong identity card ("HKID") numbers, in order to protect privacy.</p> <p>(g) Support the proposal to empower the Registrar of Companies to compound offences committed by companies.</p>	
001548-001999	Hong Kong Small and Medium Enterprises Association ("HKSMEA")	<p>HKSMEA's views as follows --</p> <p>(a) CB was too technical for small and medium enterprises ("SMEs") to understand and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>make comment on. The Administration should summarize the proposals and major changes to facilitate SMEs.</p> <p>(b) CB should not include specific provisions on liabilities of company directors. This might deter people from starting business of their own.</p> <p>(c) The majority of local companies were SMEs. They were usually business of small scale operated on family basis. CB should not add burdens on them.</p> <p>(d) To relieve the burden on SMEs, SMEs with small business turnovers should be exempted from the requirement to submit auditor's report on their accounts.</p>	
002000-002648	The Law Society of Hong Kong ("LSHK")	<p>LSHK supported the policy initiatives in CB</p> <p>LSHK had provided a submission dated 29 March 2011 to the Bills Committee. The major views were highlighted as follows --</p> <p>(a) Under Clause 2, the definition of "company" was problematic and should be changed. There should also be a definition of "public" in CB.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Proposed amendments in clause 279 regarding financial assistance given by companies not exceeding 5% of shareholders fund to give guidance on the calculation of the 5% threshold and to remove the reference to "fair value".</p> <p>(c) Proposed amendments in clause 281 concerning financial assistance given by companies by ordinary resolution so that financial assistance may only be given with the sanction of a special resolution for better protection to minority shareholders.</p>	
002649-003141	The Institute of Certified Management Accountants (ICMA Australia) ("ICMA")	<p>ICMA's views as follows --</p> <p>(a) It supported CB in principle.</p> <p>(b) It did not recommend a mandatory requirement for a private company to have at least one natural person as director. The proposal could not check anti-money laundering activities and might undermine the competitive advantage of Hong Kong. The existing regulatory regime on private companies was adequate and anti-money laundering activities were regulated by the Banking Ordinance.</p> <p>(c) The requirement for company directors who were natural</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>persons to disclose their personal information might deter competent people from taking up the position.</p> <p>(d) The requirement for companies to appoint natural persons as directors would increase operating costs for companies, in particular, SMEs.</p> <p>(e) Keeping the company registration system easy and simple would help maintain Hong Kong's competitiveness and attract more international companies to set up companies in Hong Kong.</p>	
003142-003209	The Society of Trust and Estate Practitioners (HK) Limited	The representative of the organization remarked that she was attending the meeting as an observer.	
003210-003832	The Hong Kong Institute of Directors ("HKIoD")	<p>HKIoD' views as follows --</p> <p>(a) Company directors had the responsibility to perform their duties with care, skills and diligence. Company directors should have the necessary competence when they first assume their posts. Directors should be encouraged to improve their knowledge and skills as well as updated on the best corporate governance practices through continuous training so that they could</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>perform their duties more effectively.</p> <p>(b) Proper initial training and continuous professional development ("CPD") for company directors were vital to enhance corporate governance in Hong Kong. The Administration should consider including provisions in CB on initial and continuous training requirements for directors.</p> <p>(c) While company directors should be held accountable for their work, there should be suitable measures to protect them from wrong business decisions/acts made in good faith.</p> <p>(d) There was concern about the proposal to introduce a statutory statement on the director's general duty of care, skill and diligence in clause 456. If the extent of liabilities arising from these duties was unclear, there would be great uncertainty for directors, and capable and well-qualified individuals would be deterred from taking up the position.</p> <p>(e) The statutory statement on the director's general duty of care, skill and diligence should underpin the existing common law and equitable principles and to permit that body of case law to evolve and develop.</p>	

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		<p>(f) A business judgment rule should be introduced to work in conjunction with the statutory statement of duty of care, skill and diligence.</p> <p>(g) Appropriate insurance should be provided for company directors to cover expenses relating to legal actions brought against their acts and decisions.</p>	
003833-004543	The Chamber of Hong Kong Listed Companies ("CHKLC")	<p>CHKLC's views as follows --</p> <p>(a) CHKLC was against the Administration's proposal to retain the headcount test for members' schemes for listed companies as it ran contrary to the view of majority respondents in the public consultation. A large number of business and professional bodies, including Hong Kong General Chamber of Commerce, The Law Society of Hong Kong, the Hong Kong Bar Association and the Hong Kong Institute of Chartered Secretaries considered that the test should be abolished.</p> <p>(b) The headcount test should be abolished as it deviated from the "one share, one vote" principle, which was the corner stone of corporate governance nowadays.</p> <p>(c) Even if headcount test was maintained, it was still possible for different parties, including</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>major or minority shareholders, to manipulate the voting results.</p> <p>(d) Headcount test might not be effective in protecting interests of minority shareholders as their interests and concerns were diverse and at times conflicting. The test might enable minority shareholders to dominate the voting results at the expense of others' interest.</p> <p>(e) There was already effective means to protect minority shareholders' interests in privatization of a listed company. The Takeovers Code stipulated that the number of votes cast against the resolution in the scheme shall not be more than 10% of the voting rights attached to shares not held by controlling shareholders or their connected parties. The low threshold offered an effective protection for minority shareholders. In the privatization scheme of Crocodile Garments in 2009, the 16% disinterested shares had turned down the scheme.</p> <p>(f) Since most investors were non-registered shareholders of a company as their shares were held in CCASS through brokers or custodians, it was inconvenient for them to participate in the headcount test.</p>	

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		<p>While the proposed introduction of a scripless market in Hong Kong would help address this concern, it was doubtful whether small investors would register their shares under their own names in CCASS as this involved cost.</p>	
004544-005218	PCCW Minority Share Holder Alliance ("PCCW MSHA")	<p>PCCW MSHA's views as follows --</p> <ul style="list-style-type: none"> (a) Failure of the privatization scheme of PCCW in 2009 was caused by the practice of share splitting, which was considered by the court as a form of unlawful rigging. (b) The offer of a reasonable price for minority shareholders was the key to success of a privatization scheme. (c) Most small investors held their shares through brokers or custodians in CCASS and this had prevented them from participating in headcount test. There should be improvement in this area. (d) The Administration should strengthen the regulatory regime in the Companies Ordinance ("CO") to address existing loopholes. Headcount test was an effective means to protect minority shareholders' interests and hence must be retained. 	

Time marker	Speaker	Subject(s)	Action required
005219-005839	Investors Concern ("ICG") Interest Group	<p>IICG's views as follows --</p> <p>(a) Protection for small investors' interest was inadequate despite Hong Kong was a major global financial centre. The Administration's proposal to retain the headcount test was worth supporting for enhancing protection of small investors' interest. The Administration should stand firm on this proposal.</p> <p>(b) Failure of the privatization of PCCW was largely due to the headcount test, which had prompted PCCW to practice share splitting.</p> <p>(c) The success of a privatization scheme hinged on whether there was a fair price offered by the company. If the price offer was reasonable, headcount test would not be a hurdle to privatization. This was evidenced by the successful privatization of Hutchison Telecom.</p> <p>(d) Wing On Travel (now renamed as Rosedale Hotel) was another example. As a result of manipulation and erroneous investments, the share price of the company had dropped by 99% from \$210 in 2001 to \$0.45 in 2011. Yet, the net asset per share stood at \$4.50. If privatization for the company</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>was allowed, small shareholders would lose 90% of their fortunes.</p> <p>(e) In order to protect small investors' interest, the Administration should deal with the problem of "inflated shares" in an effective way.</p>	
005840-010246	Asian Citrus Victims Alliance ("ACVA")	<p>ACVA's views that as follows --</p> <p>(a) The Hong Kong Exchanges and Clearing Ltd. ("HKEx"), Asian Citrus Holdings Ltd., CLSA Ltd. and Securities & Futures Commission ("SFC") should be held responsible for the losses suffered by small investors in Asian Citrus Holdings Ltd. due to HKEx's failure in displaying trading information on a 10-for-1 split of the stock and the price of the stock traded in overseas markets.</p> <p>(b) The misleading trading information provided by HKEx had led to market speculations causing huge losses to small investors and suspension of the trading of the stock on the first day of its listing in Hong Kong in November 2009.</p> <p>(c) Asian Citrus Holdings Ltd. and CLSA Ltd. had breached the listing rules and provisions of CO.</p>	

Time marker	Speaker	Subject(s)	Action required
		(d) It was disappointing that SFC had not provided an investigation report on the case.	
010247-010957	The Investors Protection Association ("IPA")	<p>IPA's views as follows --</p> <p>(a) The Administration should protect small investors by combating manipulative activities of major shareholders to lower the share price (i.e. "downward price manipulation") in order to make profit, such as through continuous consolidation of shares/rights and right issues. The number of shares will increase dramatically and small investors are required to subscribe for new shares again and again to avoid their shareholding being diluted.</p> <p>(b) The case of Wing On Travel (now renamed as Rosedale Hotel) was an example, under which repeated right issues by the company had resulted in huge losses to small investors.</p> <p>(c) HKEx and SFC had failed to render assistance to small investors. The Administration should amend the relevant ordinances to plug the above loopholes.</p>	
010958-011709	1189 Rosedale Hotel (Former Wing On Travel) Minority Shareholder Alliance	<p>RHMSA's views as follows --</p> <p>(a) Due to repeated right issues of the company, the value of the</p>	

Time marker	Speaker	Subject(s)	Action required
	("RHMSA")	<p>company's shares had substantially declined since 1997/1998.</p> <p>(b) In order to protect minority shareholders, the Administration should regulate listed companies engaging in repeated right issues even when these companies had healthy cash-flow and high asset value but had disproportionately low share value.</p>	
011710-012412	Minority Shareholder's Interest's Concern Group ("MSICG")	<p>MSICG's views that --</p> <p>(a) The headcount test should be retained as the "one share, one vote" principle could be easily abused by major shareholders at the expense of interests of minority shareholders.</p> <p>(b) Section 168 of CO provided a fairer basis for launching a company privatization scheme as compared to section 166 which could be more easily manipulated by the company.</p> <p>(c) Headcount test would not create hurdle for privatisation. Success of a company privatisation scheme counted heavily on whether the major shareholders were willing to offer a reasonable price. Most common law jurisdictions still retained the headcount test.</p> <p>(d) CB should include provisions to require a company but not its</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>minority shareholders to bear legal costs arising from disputes over privatisation scheme.</p> <p>(e) Supported the proposal to require companies to appoint "natural persons" as directors. Corporate directorship should be discouraged, which was often a means used by major shareholders to avoid tax and legal responsibilities.</p> <p>(f) Opposed the withholding of information on directors' addresses and HKID numbers from the Companies Register.</p> <p>(g) The Administration should speed up progress in implementing the scripless market in Hong Kong.</p>	
012413-012752	Ms Alice TAM Yuk-kuen	<p>Ms Alice TAM's views as follows --</p> <p>(a) The headcount test which was an effective means to protect the interest of minority shareholders should be retained.</p> <p>(b) Headcount test was widely practiced in other jurisdictions including the United Kingdom ("UK"), Australia and Singapore.</p> <p>(c) The existing regulatory regime over the securities market needed improvement to ensure a safe and fair market for the investing public at large.</p>	

Time marker	Speaker	Subject(s)	Action required
012753-013105	公司條例草案關注組	<p>公司條例草案關注組 had the following views --</p> <p>(a) Supported retention of the headcount test as a means to enhance protection for minority shareholders' interest.</p> <p>(b) SMEs had been operating under increasingly difficult environment in recent years. To relieve the burden on SMEs, wider exemption from financial reporting, e.g. the requirement to engage auditor, should be provided to SMEs.</p>	
013106-013654	Economic Synergy ("ES")	<p>ES's views as follows --</p> <p>(a) Supported the general direction of CB.</p> <p>(b) CB was too complicated and difficult for companies, in particular, SMEs to understand. The Administration should illustrate the provisions in a reader-friendly manner to facilitate company proprietors.</p> <p>(c) The proposal to include in CB the director's general duty of care, skill and diligence, in particular the subjective standards on these attributes, would generate undue pressure on company directors and discourage talented professionals from joining company boards.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(d) As SMEs in Hong Kong were operating mostly on family basis and had limited legal knowledge and corporate training, they would have difficulty in complying with the requirements in CB. The Administration should consider relaxing the regulatory regime for SMEs. For instance, SMEs with small turnovers should be allowed to use simplified financial statements instead of a formal auditor's report.</p> <p>(e) ES did not support the retention of headcount test since it was against the principle of "one share, one vote", and the major chambers of commerce and legal, accounting and management professions also shared this view.</p> <p>(f) There was concern about the proposal to expand auditors' power as this would inevitably increase auditors' responsibilities and expenses, and hence increase in the operating costs of companies.</p>	
013655-014310	Seanew Media Company Limited	<p>The company's views as follows --</p> <p>(a) The Administration should note that CB might have impact on non-profit making organizations registered as companies under the Ordinance.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) The Administration should provide greater flexibility for companies in the use of forms/templates for company registration to cater for individual circumstances of companies, in particular SMEs.</p> <p>(c) The Administration should note that provision of information on company directors, such as their addresses and HKID numbers, might be abused by users.</p> <p>(d) On Clause 25, fees payable to the Registrar of Companies should continue to be subject to scrutiny by Legislative Council ("LegCo") instead of decided by the Financial Secretary.</p> <p>(e) On Clause 64, when forming a company, it would be more appropriate to continue the existing requirement for all founder members to sign on the incorporation form to be submitted to the Registrar of Companies.</p> <p>(f) Given the voluminous contents of CB and its complexity, the Administration and LegCo should step up efforts to promote public understanding on the provisions, and where necessary, hold more public hearing sessions.</p>	

Time marker	Speaker	Subject(s)	Action required
<i>Exchange of views with deputations</i>			
014311-014922	Administration	<p>The Administration's initial response to deputations' views as follows --</p> <p>(a) Some of the views and concerns expressed by deputations, such as "downward price manipulation", involved regulation of listed companies and the securities market, and were outside the purview of CB. These views and concerns would be reflected to the relevant regulators for consideration.</p> <p>(b) On the proposal to retain the headcount test, the Administration had received different views during previous public consultations. While a large number of respondents supported abolition of the test, some respondents including SFC, supported retaining the test. Moreover, headcount test was retained in a number of major financial centres, including UK, Australia and Singapore. The Administration would keep the matter in view in the light of latest development overseas.</p> <p>(c) Scripless market, if implemented, would enable small investors to become registered shareholders of companies more easily, and would facilitate them in participating in headcount test.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(d) The proposal to clarify directors' general duty of care, skill and diligence in CB was in line with development in other common law jurisdictions. The subjective standard all along existed in Hong Kong common law cases and there would be no change to the scope of the subjective standard, though the objective standard would be introduced as a minimum requirement.</p> <p>(e) The Administration would provide written response to the deputations' views and continue to discuss various related issues with the Bills Committee</p> <p>(Post-meeting note: The Administration's written responses to deputations' views are issued vide LC Paper No. CB(1)339/11-12(01).)</p>	
014923-020312	Ir Dr Raymond HO HKIoD ICMA IICG	<p>Ir Dr Raymond HO's declaration that he was director and non-executive director of a number of companies.</p> <p>Ir Dr Raymond HO's views/enquiries as follows --</p> <p>(a) CB should aim to improve the operation of companies, safeguard interests of minority shareholders, enhance company transparency and corporate governance, and tighten regulatory regime on companies.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) How continuous training for company directors could be implemented.</p> <p>(c) How directors of companies could meet the standard of care, skill and diligence stipulated in CB, in particular, over 90% of Hong Kong's companies were SMEs whose directors usually had limited legal knowledge and training in corporate governance.</p> <p>(d) Seek clarification on ICMA's views regarding abolition of the headcount test.</p> <p>HKIoD's response as follows --</p> <p>(a) HKIoD was running initial training courses and CPD training for directors of different categories of companies including SMEs covering subjects such as corporate governance, risk assessment and financial reporting.</p> <p>(b) HKIoD at present required its members to attend a minimum of 10 hours of CPD training each year, and set 20 hours as the best practice for members. HKEx was consulting relevant parties on a proposal to set CPD standard at 8 hours each year. Initial feedbacks from parties were supportive to provide continuous training for directors but considered that the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>requirement of 8 hours would be a bit long.</p> <p>(c) HKIoD would continue to discuss with the Administration and HKEx for making CPD a mandatory requirement for company directors.</p> <p>(d) Initial and CPD training were essential and would help company directors in discharging their duties more effectively. Company directors had the responsibility to act with care, skills and diligence for the success of their companies.</p> <p>ICMA's clarification on its' views on the headcount test as follow --</p> <p>(a) Experience from the privatization of Crocodile Garments in 2009 had demonstrated that buy-out proposal offered by major shareholders at unreasonably low price would not be accepted by minority shareholders.</p> <p>(b) Headcount test was not a reliable means to safeguard the interests of minority shareholders, as there were loopholes in the arrangement which allowed rigging of voting results by shareholders.</p> <p>(c) The regulatory regime under the Securities and Futures Ordinance ("SFO") provided better</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>protection for minority shareholders' interest. Overseas jurisdictions which had retained the headcount test did not have legal provisions similar to those in SFO.</p> <p>IICG's views on the headcount test as follows --</p> <p>(a) Experience of the privatization of PCCW had revealed that if reasonable offers were made to minority shareholders, privatization proposals would be supported.</p> <p>(b) Headcount test would be a useful means to protect minority shareholders in an unreasonable privatization scheme offered by a listed company which used "downward price manipulation" and other malpractices to pave the way for the privatization.</p>	
020313-020832	Mr CHAN Kam-lam HKSMEGA	<p>Mr CHAN Kam-lam's enquiry to HKSMEGA on the role and legal responsibilities of independent non-executive director vis-à-vis other directors in a company.</p> <p>HKSMEGA's response as follows --</p> <p>(a) An independent non-executive director was appointed to perform the role of a "third party advisor" to provide objective advice to the company.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Since independent non-executive directors would not engage in the daily operation of the company and might not be informed of all matters of the company, they should not be held responsible for civil liabilities of the company. They should be held responsible for criminal offences of CO.</p> <p>Mr CHAN Kam-lam's views that --</p> <p>(a) the Administration should set out clearly the role, responsibilities and legal liabilities of independent non-executive directors, and the circumstances under which they would be held accountable for the mistakes they made; and</p> <p>(b) as most independent non-executive directors might not play an active role in the company's decision-making process, it might not be appropriate to hold them liable for criminal offences</p>	
020833-024135	<p>Ms Miriam LAU Administration HKIoD ICMA CHKLC LSHK PCCW MSHA MSICG IPA RHMSA</p>	<p>Ms Miriam LAU's enquiry about --</p> <p>(a) the reasons for the Administration to retain the headcount test despite objection from most respondents in the public consultation exercise, including large companies, chambers of commerce and professional bodies; and</p>	

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		<p>(b) available means to protect the interests of minority shareholders if headcount test was abolished, given that SFO or the Takeovers Code could not effectively deal with "downward price manipulation" activities engaged by major shareholders</p> <p>The Administration's response that --</p> <p>(a) while the result of the public consultation exercise conducted in 2010 revealed that, in terms of number, most respondents did not favour the proposal to retain the headcount test, a certain number of organisations including SFC, Hong Kong Association of Banks supported the proposal considering it a safeguard to protect interests of minority shareholders;</p> <p>(b) it should be noted that a number of overseas jurisdictions including UK, Australia, Singapore and some offshore jurisdictions still retained the headcount test;</p> <p>(c) the Administration believed that implementation of a scripless market in Hong Kong would facilitate minority shareholders in participating in the headcount test; and</p> <p>(d) in CB, the court would be given a new discretion to dispense with the headcount test in special</p>	

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		<p>circumstances, and this would strike a reasonable balance</p> <p>HKIoD's views as follows --</p> <p>(a) Both the headcount test and the "one share, one vote" principle had their own merits. Due to bitter experiences of minority shareholders in privatization cases in the past years, strengths of the "one share, one vote" principle had been distorted.</p> <p>(b) If a listed company paid heed to the interests of minority shareholders in a privatization scheme, whether headcount test or "one share, one vote" principle was employed would make no difference.</p> <p>CHKLC's views as follows --</p> <p>(a) The Takeovers Code provided adequate and effective protection to minority shareholders in a privatization scheme.</p> <p>(b) Even the new proposal would provide the court with the discretion to dispense with the headcount test under special circumstances, it would be difficult to find evidence to support that unfair share splitting or rigging of voting results had occurred. Also, court proceedings would be lengthy and costly.</p>	

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		<p>LSHK's views as follows --</p> <ul style="list-style-type: none"> (a) Its submission dated 29 March 2011 to the Bills Committee did not contain views on the headcount test, as there were diverse views among LSHK's members on the subject. (b) Both headcount test and the "one share, one vote" principle had their own merits. While headcount test could better protect the interest of minority shareholders, the existing market practice for small investors to hold their shares under the name of nominees and custodians revealed room for improvement. Success of a privatization scheme depend largely on the offer of a "fair price" acceptable to the minority shareholders. (c) Headcount test involved considerable uncertainties. While it was difficult to avoid vote rigging, it would be equally difficult to gather evidence to bring such unfair practice to the attention of the court. (d) Legislation of overseas jurisdictions, such as the UK Companies Act 2006, might not suit the situations in Hong Kong. <p>IICG's views as follows --</p> <ul style="list-style-type: none"> (a) Headcount test should not be taken as an obstacle to company privatization. 	

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		<p>(b) The Takeovers Code was not effective in dealing with "downward price manipulation" activities employed by the majority shareholders to pave the way for privatization of listed companies.</p> <p>(c) Headcount test, as the last resort in protecting minority shareholders' interest, must be retained.</p> <p>PCCW MSHA's views as follows --</p> <p>(a) The cooperation of large corporations and the people of Hong Kong including small investors had contributed to the prosperity of Hong Kong.</p> <p>(b) If Hong Kong was to maintain its position as a leading global financial centre, headcount test, as the only protection for minority shareholders, must be retained.</p> <p>(c) Failure of the privatization of PCCW was a case supporting that justice had been done for minority shareholders.</p> <p>MSICG's views as follows --</p> <p>(a) Headcount test, as the last means of protection for minority shareholders, must be retained for approving a company's privatization scheme, while the</p>	

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		<p>"one share, one vote" principle could be applied to financial arrangements between the company and other parties.</p> <p>(b) The Takeovers Code was ineffective in checking manipulative activities of the major shareholders in achieving their goal.</p> <p>(c) Fair offer by major shareholders remained the key to success of a privatization scheme.</p> <p>IPA's view that "one share, one vote" principle was an unfair arrangement, since major shareholders could easily manipulate the results through allotting of shares to third parties, and hence could substantially reduce the proportion of shares held by minority shareholders.</p> <p>RHMSA's view that it would be inappropriate for Hong Kong to follow overseas legislation blindly as they might not cater for the situations in Hong Kong.</p>	
024136-025429	Ms Audrey EU HKIoD Administration	<p>Ms Audrey EU sought clarification from HKIoD on its views regarding --</p> <p>(a) complete abolishment of corporate directorship;</p> <p>(b) the need to introduce a business judgment rule in CB to shield company directors from</p>	

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		<p>liabilities for their actions and decisions made on an informed basis, in good faith, in absence of conflict of interest and in the honest belief that the decisions/actions were in the best interests of the company; and</p> <p>(c) whether company directors should be held responsible for "negligence" in their decisions.</p> <p>HKIoD's response as follows --</p> <p>(a) HKIoD, in principle, did not support appointing corporate directors in companies, since directorship involved "personal" responsibility of individuals. Liability should be borne by directors who were natural persons rather than corporations. While HKIoD's views were made based on local experience, it had noted that overseas countries were moving in a different direction.</p> <p>(b) HKIoD believed that natural person directors could benefit from continuous training to improve their skills and enhance their competence.</p> <p>(c) The inclusion of a general statutory statement on the duty of care, skill and diligence for directors in CB would mean imposing a "mixed objective/subjective standard" on</p>	

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		<p>company directors. There were uncertainties as how the mixed objective/subjective test on directors would be applied by Hong Kong courts in future. The purpose of a mandatory business judgement rule was to shield directors from liabilities for their decisions and actions which were made in good faith and in the best interests of the company.</p> <p>(d) As regards whether company directors should be held liable for "negligence" as a kind of misconduct in addition to default, breach of duty or breach of trust (clause 890), HKIoD opined that company directors should not be held liable for wrong judgement, had they acted honestly with reasonable care and skills. For instance, company directors should not face legal consequence if they had followed the code of practice in releasing sensitive information relating to share price of the company.</p> <p>The Administration's advice as follows --</p> <p>(a) Singapore and Australia had prohibited the appointment of corporate directors in companies. The UK Companies Act 2006 required a company to have at least one director who was a</p>	

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		<p>natural person. The relevant provisions in CB were modelled on the UK Companies Act 2006.</p> <p>(b) At present, about 5% of companies in Hong Kong had appointed corporate directors. Feedbacks from the relevant stakeholders were that the appointment of corporate directors could meet commercial and structural needs of some companies.</p> <p>(c) The Administration had examined thoroughly the proposal to bring in a mandatory business judgement rule in the light of comments from parties in previous consultations and legislative reviews, and had not pursued the proposal in view of the jurisprudential rule and the concern that stating the rule in statute may hinder the development of common law rules.</p>	
025430-025732	Ms Miriam LAU HKSMEGA The Administration	<p>Ms Miriam LAU enquired about HKSMEGA's proposal for a corporate director to appoint a natural person as its authorized representative, including the rationale for the proposal and whether there was similar arrangement in other jurisdictions.</p> <p>HKSMEGA's response that the suggestion for a corporate director to appoint natural person as his</p>	

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		<p>representative was an innovative idea. Such arrangement would facilitate shareholders in locating the responsible persons for breaches committed by the company. In particular, the arrangement would cater for large companies and facilitate international corporations to set up companies in Hong Kong.</p> <p>The Administration responded that it was not aware of similar arrangement adopted in other jurisdictions. A director, regardless whether being a natural person or a body corporate, was responsible for the operation of his/its company. The responsibility was not borne by an authorized representative of a corporate director.</p>	
025733-025748	Chairman	Date of next meeting	