

立法會
Legislative Council

LC Paper No. CB(1)2487/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the eighth meeting held on
Thursday, 19 May 2011, at 4:30 pm
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)
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 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

Members absent : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

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)

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

Ms Phyllis MCKENNA
Deputy Principal Solicitor
(Company Law Reform)
Companies Registry

Mrs Christine Frances SIT
Senior Solicitor (Company Law Reform)
Companies Registry

Mr Tim CHUNG
Solicitor (Company Law Reform)
Companies Registry

Mr Edward TYLER
Senior Assistant Law Officer (Civil Law)
Department of Justice

Miss Selina LAU
Senior Government Counsel
Department of Justice

Mr Ken FUNG
Government Counsel
Department of Justice

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

Action

I Meeting with the Administration

Continuation of discussion on Part 9 of the Bill

(LC Paper No. CB(1)1879/10-11(04) -- Administration's paper on Part 9 of the Companies Bill)

Discussion on Part 4 and Part 5 of the Bill

(LC Paper No. CB(1)2066/10-11(01) -- Administration's paper on Part 4 and Part 5 of the Companies Bill)

Other relevant papers

(LC Paper No. CB(3)412/10-11 -- The Bill
File Ref: CBT/17/2C -- Legislative Council Brief
LC Paper No. LS26/10-11 -- Legal Service Division Report
LC Paper No. CB(1)1406/10-11(01) -- Paper on Companies Bill prepared by the Legislative Council Secretariat (Background brief))

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

Admin 2. The Bills Committee requested the Administration to provide written responses to the following concerns/requests --

Offences under the Companies Bill that would impose liability on the "responsible person" of a company

(a) the rationale behind the imposition of liability and the level of penalty for each offence;

Part 4 -- Share Capital

Action

- (b) the details of the proposal that allows a company to apply its share capital in writing off preliminary expenses and expenses of any issue of shares of the company (clause 144);
- (c) the rationale behind the proposal for a mandatory no-par system;

Part 5 -- Transactions in relation to Share Capital

- (d) the reasons for not requiring a solvency statement to be accompanied by an auditor's report under the uniform solvency test for the types of transactions under this Part, with a sample auditor's report for such statements under existing requirements, and existing specified forms for making insolvency statements;
- (e) the reasons for not including a balance sheet test in the uniform solvency test under this Part;
- (f) the reasons for requiring a 12-month period of solvency for the uniform solvency test (clause 200); and

Part 9 -- Accounts and Audit

- (g) the details of the requirements for disclosure of directors' remuneration in the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "Listing Rules"), and directors' remuneration report in the United Kingdom.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 3 June 2011 at 9:30 am to meet with Administration.

4. There being no other business, the meeting ended at 6:28 pm.

Council Business Division 1
Legislative Council Secretariat
22 August 2012

Bills Committee on Companies Bill

**Proceedings of the eighth meeting
on Thursday, 19 May 2011, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001-001020	Chairman Mr Jeffrey LAM Mr Andrew LEUNG Mr WONG Ting-kwong Mr CHAN Kam-lam	Discussion on whether to hold a meeting on 24 May 2011 and the Chairman's advice that a decision on the matter be made at a later stage	
<u>The formulation of "responsible person" and offences under the Companies Bill</u>			
001021-002001	Mr Andrew LEUNG Chairman Dr Philip WONG Mr Jeffrey LAM Ir Dr Raymond HO Administration	Mr Andrew LEUNG's view that the Administration should critically review the formulation of "responsible person" under the Companies Bill ("CB") and the list of offences that imposed criminal liability on the "responsible person" Mr Jeffrey LAM's views that -- (a) the Administration should provide a paper setting out all criminal offences under CB, including the justifications for imposing criminal liabilities on directors for such offences; and (b) the rewrite of the Companies Ordinance ("CO") should facilitate business operation and attract foreign investment to Hong Kong	

Time marker	Speaker	Subject(s)	Action required
		<p>Ir Dr Raymond HO expressed support for Mr LAM's request for provision of the paper as soon as possible for discussion by the Bills Committee</p> <p>Dr Philip WONG's concern that onerous responsibilities imposed on company directors would discourage people from taking up directorship</p> <p>The Administration's response that apart from the paper discussed at the meeting on 13 May 2011 (LC Paper No. CB(1)2132/10-11(02)) which listed out the 168 offences under CB, it would provide another paper on offences and penalties by July 2011</p>	<p>The Administration to take action as in paragraph 2(a) of the minutes</p>
<u>Part 4 -- Share Capital</u>			
002002-003408	Administration	Briefing on Part 4 of the Bill (Annex A to LC Paper No. CB(1)2066/10-11(01))	
003409-003952	Mr Jeffrey LAM Administration Dr Philip WONG	<p>In response to Mr Jeffrey LAM's enquiry, the Administration confirmed that a person who had reported the loss of share certificate of a listed company could not obtain the replacement certificate until he completed the relevant statutory procedures</p> <p>Dr Philip WONG's enquiry regarding measures to protect a person from financial loss relating to transactions of lost share certificates</p> <p>The Administration's response that such a case involved criminal offences and there were detailed</p>	

Time marker	Speaker	Subject(s)	Action required
		provisions in CO as well as CB dealing with procedures for replacement of lost share certificates	
003953-004449	Senior Assistant Legal Adviser 3 ("SALA3") Administration Chairman	<p>SALA3's enquiry on whether a company would be allowed to apply its share capital in writing off preliminary expenses and expenses of any issue of share of the company under CB, and whether there would be restriction in this regard; as compared to the situation under CO where such expenses were allowed to be deducted from the share premium account of the company</p> <p>The Administration's response that a company could use share capital to write off preliminary expenses etc. as a result of the adoption of the mandatory no-par system; and the position was substantially the same under both CO and CB</p> <p>The Chairman's request for more information about the proposal, in particular, when it was applied to non-listed companies (which might not have any share premium); and the practices in other Common Law jurisdictions</p>	The Administration to take action as in paragraph 2(b) of the minutes
004450-005303	Dr Philip WONG Administration Chairman	Dr Philip WONG's enquiry on the rationale for introducing a mandatory no-par system for shares as he considered that the par value system had been working smoothly for a long time, and his concerns that the proposal would necessitate the introduction of a large number of consequential amendments to other ordinances	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that --</p> <p>(a) no-par system had been adopted in other Common Law jurisdictions, including Australia and Singapore;</p> <p>(b) the par value system had a number of demerits, such as giving rise to complex accounting system, inhibiting raising of new capital, creating unnecessary work for share registries and costs, and misleading to unsophisticated investors; and</p> <p>(c) the abolition of the par value system was supported by a significant portion of respondents who provided views during the Administration's consultation exercises</p> <p>The Chairman's request for the Administration to consider members' views on the no-par system and give a written response</p>	<p>The Administration to take action as in paragraph 2(c) of the minutes</p>
<p><u>Part 9 -- Directors' Remuneration Report</u></p>			
<p>005304-010633</p>	<p>Chairman Administration Dr Philip WONG Deputy Chairman</p>	<p>The Chairman's enquiry on the rationale for not requiring companies to prepare separate directors' remuneration report</p> <p>The Administration's response as follows --</p> <p>(a) the majority of respondents to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the consultation on CB, including major chambers of commerce and professional bodies, considered that the proposed requirement was unnecessary;</p> <p>(b) as the vast majority of companies in Hong Kong were small and medium-sized companies and non-listed, the requirement of separate directors' remuneration reports would be onerous on them and would increase their compliance costs;</p> <p>(c) for listed companies, they were required under the Listing Rules to disclose in their financial statements details of emoluments of current and past directors;</p> <p>(d) the requirement for companies to prepare separate directors' remuneration reports would not be pursued under CB;</p> <p>(e) it would be more appropriate to consider improvements in the disclosure of the remuneration of directors of listed companies under the Listing Rules and/or the Securities and Futures Ordinance (Cap 571); and</p> <p>(f) the Administration would invite the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited to keep under review the compliance and effectiveness of the relevant Listing Rules</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Dr Philip WONG's views that when amending CO, the Administration should first consider whether there was any operation problem on the current provisions, whether the proposals in CB could address the identified problems, and whether such proposals would give rise to even bigger problems</p> <p>The Deputy Chairman's views that it was reasonable to introduce changes to CO to meet the needs of the modern business community</p> <p>The Chairman's request for the Administration to provide information on disclosure requirements of directors' remuneration under the Listing Rules and the requirements of directors' remuneration reports in the United Kingdom</p>	<p>The Administration to take action as in paragraph 2(g) of the minutes</p>
<u>Part 5 -- Transactions in relation to Share Capital</u>			
010634-011951	Administration	The Administration's briefing on Part 5 of the Bill (Annex B to LC Paper No. CB(1)2066/10-11(01))	
011952-012748	Chairman Administration	<p>The Chairman's enquiry on the reason for not attaching an auditor's report to a solvency statement under the uniform solvency test introduced for transactions of buy-back, reduction of capital and financial assistance; and how the interests of creditors and shareholders would be protected during such transactions</p> <p>The Administration's response as</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>follows --</p> <p>(a) under the CO, auditor's reports would be required for buy-backs out of capital by private companies but not financial assistance;</p> <p>(b) as the company's solvency usually involved forward-looking business judgments, auditors would not be in a better position than the directors in ascertaining the solvency position of the company;</p> <p>(c) making a solvency statement without reasonable grounds in support was a criminal offence subject to a maximum penalty of \$150,000 and imprisonment of two years; and</p> <p>(d) there were adequate safeguards under CB through prescribed procedures for buy-backs as well as reduction of capital so as to protect the interests of creditors and shareholders</p>	
012749-013218	Mr James TO Administration	<p>Mr James TO's views that the audit requirement should be retained for solvency statements for buy-backs, as it would be important for such statements to be monitored by an independent professional, and the requirement would not be onerous on the company in terms of cost and time</p> <p>The Administration's response that it</p>	The

Time marker	Speaker	Subject(s)	Action required
		would consider members' views and provide a written response	Administration to take action as in paragraph 2(d) of the minutes
013219-013536	Mr James TO Administration	<p>Mr James TO's enquiry on the definition of solvency of a company</p> <p>The Administration's response as follows --</p> <p>(a) the uniform solvency test in relation to a transaction under Part 5 of CB was based on the cash flow of the company; and</p> <p>(b) solvency, in relation to a transaction under Part 5 of CB, referred to a company's ability to pay its debts when they became due during the period of 12 months immediately following the date of the transaction</p>	
013537-014018	Chairman Administration	<p>The Chairman's enquiries on --</p> <p>(a) the format of the solvency statement to be submitted to the Registrar of Companies;</p> <p>(b) the reasons for requiring a 12-month period of solvency for the uniform solvency test (clause 200); and</p> <p>(c) the reasons for not including a balance sheet test in the uniform solvency test</p> <p>The Administration's response as follows --</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) a pro forma solvency statement was used under sections 47 and 49K of CO;</p> <p>(b) the Administration had carefully considered the proposed requirement of a 12-month period of solvency for the uniform solvency test; it considered that any period longer than 12 months might be onerous for a company; and</p> <p>(c) a balance sheet test was not considered useful for the solvency test because it was a snapshot report of the affairs of a company as at a particular date; the test was the result of a mechanical application of a calculation of net asset value without including the quality of the company's assets and liabilities and their linkage over time</p>	
014019-014650	Mr James TO Chairman	<p>Mr James TO's view that CB should strive to strike a balance between facilitating financial assistance for a company in the acquisition of shares and protecting the interest of creditors</p> <p>The Chairman's view that a solvency statement without an auditor's report might not be adequate to support the credibility of a company's solvency for transactions under Part 5 of CB, and his request for the Administration to provide a sample</p>	The Administration

Time marker	Speaker	Subject(s)	Action required
		auditor's report which was required for solvency statements under CO, and the specified forms for making solvency statements under CO	to take action as in paragraph 2(d) of the minutes
014651-014845	Deputy Chairman Administration	<p>The Deputy Chairman's request for the Administration to provide supplementary information about the reasons for not including a balance sheet test in the uniform solvency test and requiring a 12-month period of solvency, and her enquiry about the use of solvency tests in overseas countries</p> <p>The Administration's response that solvency tests were widely used in New Zealand and becoming common in the United Kingdom and Singapore; and the provisions in CB had made reference to the practice in Singapore and the United Kingdom</p>	The Administration to take action as in paragraphs 2(e) & 2(f) of the minutes
014846-014906	Chairman	Date of next meeting	