

立法會
Legislative Council

LC Paper No. CB(1)2536/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twelfth meeting held on
Tuesday, 28 June 2011, at 9:00 am
in Conference Room A 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
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, GBS, 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
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, 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)

Ms Ada CHUNG, JP
Registrar of Companies
Companies Registry

Ms Rita HO
Registry Solicitor
Companies Registry

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

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

Ms Kitty TSUI
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

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

Matters arising from the meetings on 3 and 10 June 2011

(LC Paper No. CB(1)2439/10-11(05) -- Administration's response to issues raised by members at the meeting on 3 June 2011

LC Paper No. CB(1)2577/10-11(01) -- Administration's response to issues raised by members at the meetings on 3 and 10 June 2011)

Discussion on Part 14 of the Bill

(LC Paper No. CB(1)2389/10-11(01) -- Administration's paper on Part 13 and Part 14 of the Companies Bill)

Discussion on Part 15 and Part 19 of the Bill

(LC Paper No. CB(1)2439/10-11(06) -- Administration's paper on Part 15 and Part 19 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))

Action

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

2. Noting the trend that many companies operating their core business in Hong Kong were incorporated overseas, some members expressed concern whether the Companies Bill ("CB") would affect Hong Kong's competitiveness as a corporate domicile. There were also concerns about different degree of regulation under CB over Hong Kong companies and companies incorporated overseas, and over listed and non-listed companies; as well as whether there would be sufficient protection for investors in these companies. The Administration was requested to provide a paper giving an analysis of --

Admin

- (a) the trend in the past 20 years of companies with local operation seeking incorporation outside Hong Kong, and the reasons involved, in particular the listed companies;
- (b) the impact of CB on these companies and the competitiveness of Hong Kong as a corporate domicile; and
- (c) how the regulatory regimes for these companies would provide adequate protection for investors.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 8 July 2011, at 10:45 am, to meet with the Administration.

4. There being no other business, the meeting ended at 11:29 am.

Bills Committee on Companies Bill

**Proceedings of the twelfth meeting
on Tuesday, 28 June 2011, at 9:00 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001-000529	Chairman	Opening remarks	
<u>Discussion on the Administration's response to issues raised by members on 3 June 2011 relating to Parts 7 and 8 (LC Paper No. CB(1)2439/10-11(05))</u>			
000530-001651	Administration	Briefing on the written response to issues raised by members on 3 June 2011 relating to Part 7 (Distribution of Profits and Assets) and Part 8 (Registration of Charges) (paragraphs 10 to 25 of LC Paper No. CB(1)2439/10-11(05))	
001652-001857	Chairman Administration	<p>The Chairman's enquiry on whether the provisions in the Companies Ordinance ("CO") on distribution in-specie would remain unchanged</p> <p>The Administration's response that it was preparing a paper, which would give more information to the Bills Committee on the subject of distribution in-specie, including the relevant guidelines issued by the Hong Kong Institute of Certified Public Accountants</p>	
001858-002135	Mr Jeffrey LAM Administration Chairman	<p>Mr Jeffrey LAM's view that the Administration should reconsider the need to impose criminal liability on the responsible person of a company for late registration of charges</p> <p>The Administration's response that registration of charges was important to the chargees in case of a company's liquidation, and it would consider Mr LAM's view</p> <p>The Chairman's view that if the court had extended the time for registration of a charge, criminal liability should not apply to the concerned company</p>	

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<u>Discussion on the Administration's response to issues raised by members on 3 and 10 June 2011 relating to Part 10 (LC Paper No. CB(1)2577/10-11(01))</u>			
002136-003520	Administration	Briefing on the written response to issues raised by members on 3 and 10 June 2011 relating to Part 10 (Directors and Company Secretaries) (LC Paper No. CB(1)2577/10-11(01))	
003521-003737	Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM's enquiry on the extent of a director's duty of care in respect of the business of the company's subsidiaries and sister companies</p> <p>The Administration's response that --</p> <p>(a) under clause 456(3), the duty of care as specified in clause 456(1) was owed by a director of a company to the company only; and</p> <p>(b) if the director was not a director of the company's subsidiaries or sister companies, no directors' duty of care would be owed to these entities</p>	
003738-004803	Dr Philip WONG Administration	<p>Dr Philip WONG's enquiries on --</p> <p>(a) the trend in the past 20 years and the reasons for companies with local operation to seek incorporation outside Hong Kong, in particular the listed companies;</p> <p>(b) the impact of the Companies Bill ("CB") on these companies and the competitiveness of Hong Kong as a corporate domicile; and</p> <p>(c) how the regulatory regimes for these companies would provide adequate protection for investors</p> <p>Dr Philip WONG's view that the Administration should analyse the above issues</p> <p>The Administration's response that --</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) the major factor for newly listed companies to be incorporated offshore was historical, relating to the handover of sovereignty of Hong Kong in 1997;</p> <p>(b) the rewrite of CO sought to modernize the Hong Kong company law and enhance the standards of corporate governance;</p> <p>(c) the Administration was mindful of the need to strike a balance between maintaining proper corporate governance standards and encouraging incorporation of companies in Hong Kong;</p> <p>(d) while CO governed companies incorporated in Hong Kong, the Securities and Futures Ordinance and the Listing Rules set out statutory and non-statutory requirements for listed companies; and</p> <p>(e) the Administration would provide written information about companies incorporated offshore, the regulatory regime for these companies and the competitiveness of Hong Kong as a corporate domicile</p>	<p>The Administration to take action as in paragraph 2 of the minutes</p>
004804-005628	Mr Ronny TONG Administration	<p>Mr Ronny TONG's view that a modern and up-to-date legal infrastructure for the incorporation and operation of companies in Hong Kong would enhance the competitiveness of Hong Kong as a corporate domicile, hence companies incorporated offshore ("non-Hong Kong companies") might change their places of registration back to Hong Kong</p> <p>Mr Ronny TONG's enquiry on whether CB would enhance the regulation of non-Hong Kong companies</p> <p>The Administration's response that --</p> <p>(a) Part 16 of CB dealt with regulation of registered non-Hong Kong companies; there were enhanced regulation of the duties of the authorized representatives of</p>	

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		<p>registered non-Hong Kong companies. Moreover, the sanctions on breaches of CB requirements by registered non-Hong Kong companies had been modified to align with those of Hong Kong incorporated companies;</p> <p>(b) under Part 14 of CB, there were provisions on providing remedies for protection of companies' or members' interests which were applicable to a registered non-Hong Kong company, including the unfair prejudice remedies, the statutory injunction that provided for the restraining of conduct that constituted contravention of CB, the statutory derivative action, and the right to seek a court order for inspection of company records; and</p> <p>(c) if necessary, the Hong Kong Exchanges and Clearing Limited ("HKEx") would amend the Listing Rules regarding the standard of conduct of directors of listed companies when CB was enacted</p>	
005629-010242	Mr Albert HO Chairman Administration	<p>Mr Albert HO's views that --</p> <p>(a) there might be greater public concerns on the conduct of listed companies with core businesses operated outside Hong Kong (such as in the Mainland) than on companies incorporated offshore, as the total value of the shares of the former amounted to more than half of the value of the local stock market;</p> <p>(b) for companies incorporated in Hong Kong, the misconduct of the directors might lead to criminal sanctions or civil claims; however, for listed companies incorporated outside Hong Kong, the most serious consequences for their misconduct might be only suspension of listing or public reprimands; and</p> <p>(c) it should be noted that the major activities</p>	

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		<p>of these companies in Hong Kong were shares trading; it might not be fair to impose on them the same regulations for companies operating their businesses in Hong Kong</p> <p>The Chairman's comments that --</p> <p>(a) there was a regulatory gap between Hong Kong companies and non-Hong Kong companies listed on the stock market; and</p> <p>(b) the Administration's follow-up paper should give more information about the regulation of listed companies vis-à-vis non-listed companies</p> <p>The Administration's response that --</p> <p>(a) the existing CO and CB mainly governed companies incorporated in Hong Kong; and</p> <p>(b) for listed companies, the Securities and Futures Ordinance and the Listing Rules issued by HKEx applied</p>	
010243-010437	Mr Ronny TONG	Mr Ronny TONG's view that CO should set out basic requirements relevant to the corporate governance of listed and non-listed companies incorporated in Hong Kong, while additional requirements for listed companies should be imposed by other rules/regulations	
010438-010634	Mr Jeffrey LAM	Mr Jeffrey LAM's view that it was necessary to strike a balance between attracting non-Hong Kong companies to invest in Hong Kong and ensuring good corporate governance	
<u>Discussion on the Administration's response to issues raised by members on 3 and 10 June 2011 relating to Part 11 (LC Paper No. CB(1)2577/10-11(01))</u>			
010635-011017	Administration	Briefing on the written response to issues raised by members on 3 and 10 June 2011 relating to Part 11 (Fair Dealings by Directors) (LC Paper No. CB(1)2577/10-11(01) -- paragraph 8 and Annex C)	

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011018-011100	Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM's enquiry on whether a director's godchildren according to Chinese customs (誼子女) were considered "persons connected with a director"</p> <p>The Administration's response that the scope of "persons connected with a director" included adopted children and step-children, and godchildren according to Chinese customs were not covered</p>	
011101-011300	Chairman Administration	<p>The Chairman's enquiry on whether reference had been made to international practices in widening the scope of persons to be classified as "persons connected with a director" under CB</p> <p>The Administration's response that in formulating the proposal, it had made reference to relevant provisions of the United Kingdom Companies Act 2006, with suitable modifications to cater for local circumstances</p>	
011301-011658	Deputy Chairman Administration	<p>The Deputy Chairman's enquiry on the liability of a director for failure to disclose the interest of entities connected with him</p> <p>The Administration's response that --</p> <ul style="list-style-type: none"> (a) under CB, the ambit of disclosure was widened to cover "transactions" and "arrangements" instead of just "contracts"; (b) for a public company, the ambit of disclosure was widened to include disclosure by a director of any material interest of entities connected with him; (c) (b) above did not apply to private companies; and (d) a director or shadow director who contravened the requirements at (a) and (b) above committed an offence and was liable to a maximum fine at level 6; however, it was a defence to establish that the director had taken all reasonable steps 	

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		to secure compliance with the disclosure requirements	
011659-012148	Mr Ronny TONG Administration	<p>Mr Ronny TONG's enquiry on whether the regulation of a director's disclosure of interest under CB was more stringent than that under other ordinances relating to disclosure of interest in shares</p> <p>The Administration's response that --</p> <p>(a) the regulation under CB regarding disclosure of interest was more stringent than that under the Listing Rules, in that the prohibitions under CB covered a wider category of persons connected with a director, including an adult child/adult step-child/adult illegitimate child of any age, etc.;</p> <p>(b) if necessary, HKEx would align the relevant part of the Listing Rules with the corresponding provisions under CB upon the latter's enactment</p>	
012149-012313	Mr Jeffrey LAM Administration	<p>Mr Jeffrey LAM's enquiries on --</p> <p>(a) whether the siblings of a director's cohabitee were included as "persons connected with the director";</p> <p>(b) whether the cohabitee was equivalent to the spouse of the director, as far as the scope of connected entities was concerned</p> <p>The Administration's response that --</p> <p>(a) under Part 11 of CB, the cohabitee was not the same as the spouse;</p> <p>(b) the siblings of the cohabitee of a director were not considered "persons connected with the director", whereas a minor child/step-child/illegitimate child/minor adopted child of the cohabitee who lived with the director was</p>	

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012314-013047	Administration Chairman	Briefing on Annex C to LC Paper No. CB(1)2577/10-11(01) The Chairman seeking clarifications on various points and the Administration's response	
<i>Break (013048- 014229)</i>			
<u>Discussion on Part 14</u>			
014230-014739	Administration	The Administration's briefing on Part 14 -- Remedies for Protection of Companies' or Members' Interests (Annex B to LC Paper No. CB(1)2389/10-11(01))	
014740-014849	Chairman Administration	The Chairman's enquiry on whether the concern mentioned in paragraph 8 of the paper was the view of an organization or an individual The Administration's response that it was the view of an individual	
<u>Discussion on Part 15</u>			
014850-015951	Administration	Briefing on Part 15 -- Dissolution by Striking Off or Deregistration (LC Paper No. CB(1)2439/10-11(06))	
015952-020642	Mr Albert HO Administration	Mr Albert HO's enquiry on -- (a) whether a company which restored its registration would be taken by the Registrar of Companies ("the Registrar") as if it had not been deregistered; and (b) whether the Administrative Appeal Board would, under CB, handle appeals on deregistration of a company The Administration's response that -- (a) under section 291AB of CO, a company reinstated under subsection (1) or (2) was taken to have continued in existence as if it had not been deregistered; there were similar provisions under CB;	

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		<p>(b) a simplified administrative restoration procedure would be introduced under CB to enable the Registrar to restore the registration of a company;</p> <p>(c) under the administrative restoration procedure, the company had to meet three conditions: (i) the company must be in operation at the time its name had been struck off; (ii) if the company had any immovable property situated in Hong Kong which had become vested in the Government as bona vacantia, the Government had no objection to the restoration; and (iii) the applicant must bring up to date the company's records kept by the Registrar; and</p> <p>(d) as the above procedure would only involve consideration and examination of straightforward facts, for the sake of efficiency, it would not be necessary to set up an administrative appeal channel for the procedure; however, complicated cases would need recourse to the court</p>	
020643-020844	Chairman Mr Albert HO Administration	<p>The Chairman's and Mr Albert HO's remarks that they supported extending the voluntary deregistration procedure (clause 737) to guarantee companies, most of which were social or community service organizations; these companies might need to dissolve themselves in due course but it would be costly for these companies to commence a winding-up procedure</p> <p>Mr Albert HO's enquiries on --</p> <p>(a) the percentage of companies which had failed to file annual returns to the Registrar; and</p> <p>(b) the number of companies which had their registration restored after being struck off</p> <p>The Administration's response that --</p>	

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		<p>(a) roughly 13% of companies in Hong Kong failed to file annual returns;</p> <p>(b) those companies which had failed to file annual returns repeatedly and could not be contacted would be struck off by the Registrar; and</p> <p>(c) it was rare for companies to request that their registration be restored after they had been struck off</p>	
<u>Discussion on Part 19</u>			
020845-021956	Administration	Briefing on Part 19 -- Investigation and Enquiries (Annex B to LC Paper No. CB(1)2439/10-11(06))	
021957-022636	Mr Andrew LEUNG Chairman Administration	<p>Mr Andrew LEUNG's enquiry on whether the Companies Registry would have adequate manpower to carry out enforcement work arising from the new power for the Registrar to obtain documents or information for an enquiry; and his concern that the new power would involve extra enforcement work for other departments</p> <p>The Chairman's enquiry on the circumstances under which the Registrar would exercise the new power</p> <p>The Administration's response that --</p> <p>(a) manpower support at the Companies Registry would be strengthened to cater for the new tasks to be performed upon enactment of CB;</p> <p>(b) the new power of the Registrar was basic enquiry power, i.e. to require production of records or documents, to make copies of the records or documents and to require information or explanations in respect of the records or documents, for the purposes of ascertaining whether any conduct that would constitute an offence under clause 738(7) or clause 883(1) relating to the giving of false or misleading information</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>in documents delivered to the Registrar had taken place;</p> <p>(c) this new power would help safeguard the integrity of the register of companies and the quality of information disclosed to the public;</p> <p>(d) the Registrar would invoke the enquiry power only if she had reason to believe, and certified such in writing, that the specified act had been done, the record was relevant to the enquiry and the person was in possession of the record or document;</p> <p>(e) the assistance of the police would be sought on serious and complicated cases; and</p> <p>(f) criminal sanctions would be imposed for non-compliance with the Registrar's requests</p>	
022637-022834	Chairman Administration	<p>The Chairman's concluding remarks, announcement of the date of the next meeting, and request for the Administration to provide outstanding follow-up papers as soon as possible</p> <p>The Administration's remarks that it would provide before the next meeting written response to issues raised by members in relation to the formulation of "responsible person" under Part 1 and discussion papers on Parts 20 and 21 of CB</p>	