

立法會
Legislative Council

LC Paper No. CB(1)2578/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the fifteenth meeting held on
Wednesday, 31 August 2011, at 2:30 pm
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)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Albert HO Chun-yan
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, 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 Arsene YIU
Acting Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)

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 Marianna YU
Deputy Registry Manager (Registration)
Companies Registry

Ms Margaret CHAN
Solicitor (Company Law Reform)
Companies Registry

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

Ms Natalie WONG
Senior Government Counsel
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

Clause-by-clause examination of the Bill

(LC Paper No. CB(1)2756/10-11(03) -- Comparison Table for
Part 2 -- Registrar of
Companies and Companies
Register
LC Paper No. CB(3)412/10-11 -- The Bill (Part 2 and Part 3))

Other relevant papers

(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)
LC Paper No. CB(1)1671/10-11(03) -- Administration's paper on
Part 1, Part 3 and Part 17 of
the Companies Bill
LC Paper No. CB(1)1879/10-11(02) -- Administration's response
to issues raised by members
at the meeting on
29 March 2011)

Action

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 requests --

Clause 37 -- Registrar may require company to resolve inconsistency with Companies Register

- (a) to review the drafting of clause 37(1) to state it clear that both "a document" and "other information" related to the same company;
- (b) to clarify the meaning of "inconsistent" information in clauses 37(1) and 29, e.g. where two charges were created by a company, if their terms contradicted each other, whether they were "inconsistent" information; if yes, whether both could be registered;
- (c) to consider providing a defence in clause 37(3), which provided that if a company failed to comply with a requirement under clause 37(1)(b), the company, and every responsible person of the company, committed an offence;

Clause 38 -- Registrar may require further information for updating etc.

- (d) to review the drafting of clauses 37 and 38, and consider providing a defence in the two clauses;

Clause 40 -- Registrar must rectify information on Companies Register on order of Court

- (e) to provide information about the relevant procedures for a person to make an application to the Court for directing the Registrar of Companies to rectify or remove any information on the Companies Register;

Clause 45 -- Issue of process for compelling production of information on Companies Register

- (f) to review the drafting of clause 45, especially the Chinese text, in order to clarify the policy intent;

Action

Clause 47 -- Registrar may withhold residential address and identification number from public inspection

- (g) to consider changing "may" to "must" in clause 47(3) which states that: *"If a person's address is withheld from public inspection under subsection (1)(a), the Registrar may instead make available for public inspection an address contained in the person's application as the person's correspondence address"*;
- (h) to provide information about the subsidiary legislation prescribing the entities to whom protected information (such as the identity card number and address of a director of a company) might be disclosed and the fee payable by the entities; and

Clause 50 -- Registrar may make protected address available for inspection

- (i) to consider setting out in the relevant practice note or external circular of the Companies Registry the action that the Registrar of Companies would take against a company when there were complaints about ineffective communication with the director at its correspondence address.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 11 October 2011 at 2:30 pm to meet with the Administration.

4. There being no other business, the meeting ended at 4:35 pm.

Bills Committee on Companies Bill

**Proceedings of the fifteenth meeting
on Wednesday, 31 August 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
001153-001355	Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 2 of the Bill (LC Paper No. CB(1)2756/10-11(03))</u>			
001356-001757	Administration Chairman	<u>Clause 33 -- Registrar may refuse to accept or register document</u> <u>Clause 34 -- Registrar may withhold registration of document pending further particulars etc.</u> <u>Clause 35 -- Appeal against Registrar's decision to refuse registration</u> The Chairman sought clarifications on clause 33. Members raised no queries on clauses 34 and 35.	
001758-002436	Administration Senior Assistant Legal Adviser 3 ("SALA3")	<u>Clause 36 -- Certain period to be disregarded for calculating daily penalty for failure to deliver document to Registrar</u> SALA3 sought clarifications.	
002437-003902	Administration Ms Miriam LAU Mr Ronny TONG Chairman SALA3	<u>Clause 37 -- Registrar may require company to resolve inconsistency with Companies Register</u> Discussion on the clause, including -- (a) the meaning of "inconsistency" of information between that contained in a document registered by the Registrar of Companies ("the Registrar") and in other information on the Companies Register; and	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the difficulty for the company or responsible person to resolve the inconsistency in the above information</p> <p>Request for the Administration --</p> <p>(a) to review the drafting of clause 37(1) to state clearly that both "a document" and "other information" related to the same company;</p> <p>(b) to clarify the meaning of "inconsistent" information in clauses 37(1) and 29, e.g. where two charges were created by a company, if their terms contradicted each other, whether they were "inconsistent" information; if yes, whether both could be registered; and</p> <p>(c) to consider providing a defence in clause 37(3), which provided that if a company failed to comply with a requirement under clause 37(1)(b), the company, and every responsible person of the company, committed an offence</p>	<p>The Administration to take action as in paragraphs 2(a) to 2(c) of the minutes</p>
003903-005505	<p>Administration Chairman Mr Ronny TONG Ms Miriam LAU</p>	<p><u>Clause 38 -- Registrar may require further information for updating etc.</u></p> <p>The Chairman, Mr Ronny TONG and Ms Miriam LAU sought clarifications on the clause.</p> <p>Mr Ronny TONG's and Ms Miriam LAU's views that --</p> <p>(a) the proposed penalties imposed on a company for failing to comply with the requirements under the clause might be too harsh; and</p> <p>(b) there was confusion caused by references to "a/the company", "a/the person" and "any other person" in clauses 37 and 38, resulting in unclear liability of the company, the person, and any other person for the offences under the two</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>clauses</p> <p>Request for the Administration to review the drafting of clauses 37 and 38, and to consider providing a defence in these two clauses</p>	<p>The Administration to take action as in paragraph 2(d) of the minutes</p>
005506-005602	Administration	<p><u>Clause 39 -- Registrar may rectify typographical or clerical error in Companies Register</u></p> <p>Members raised no queries.</p>	
005603-010209	<p>Administration SALA3 Mr Ronny TONG Chairman</p>	<p><u>Clause 40 -- Registrar must rectify information on Companies Register on order of Court</u></p> <p>Enquiries by SALA3 and Mr Ronny TONG on the procedures for making an application to the Court for directing the Registrar to rectify or remove any information on the Companies Register</p> <p>Request for the Administration to provide information about the relevant Court procedures</p>	<p>The Administration to take action as in paragraph 2(e) of the minutes</p>
010210-010452	<p>Administration SALA3 Mr Ronny TONG</p>	<p><u>Clause 41 -- Registrar may appear in proceedings for rectification</u></p> <p>SALA3's enquiries on whether the Registrar could claim legal costs for the proceedings, and whether the clause should be revised to provide for the claiming of such costs by the Registrar</p> <p>The Administration's response that the Registrar could claim legal costs</p> <p>Mr Ronny TONG's view that it was unnecessary to specify the Registrar's right for claiming legal costs as the Court had discretion in making a costs order</p>	
010453-010846	Administration	<p><u>Clause 42 -- Registrar may annotate Companies Register</u></p> <p><u>Clause 43 -- Registrar must make Companies Register available for public inspection</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 44 -- Registrar's certified true copy admissible as evidence</u></p> <p>Members raised no queries on the clauses.</p>	
010847-011847	Administration Mr Ronny TONG Ms Miriam LAU	<p><u>Clause 45 -- Issue of process for compelling production of information on Companies Register</u></p> <p>Discussion on the drafting of the clause.</p> <p>Request for the Administration to review the drafting, especially the Chinese text</p>	The Administration to take action as in paragraph 2(f) of the minutes
011848-011943	Administration	<p><u>Clause 46 -- Information excluded from public inspection by law or court order</u></p> <p>Members raised no queries.</p>	
011944-013304	Administration Chairman Ms Miriam LAU	<p><u>Clause 47 -- Registrar may withhold residential address and identification number from public inspection</u></p> <p>Discussion on whether and to what extent a director's residential address or identification number should be made available to concerned parties</p> <p>Ms Miriam LAU's view that disclosure of protected information, such as the identity card number and address of a director of a company, might be required for preparation of legal documents or commencing legal proceedings, and there should be procedures allowing such disclosure</p> <p>The Administration's advice that a director's residential address or identification number, if withheld, would continue to be made available to entities prescribed by regulations to be made by the Financial Secretary under clause 53</p> <p>Request for the Administration to --</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) consider changing "may" to "must" in clause 47(3); and</p> <p>(b) provide information about the subsidiary legislation prescribing the entities to whom protected information might be disclosed and the fee payable by the entities</p>	<p>The Administration to take action as in paragraphs 2(g) and 2(h) of the minutes</p>
013305-013320	Administration	<p><u>Clause 48 -- Interpretation</u></p> <p>Members raised no queries.</p>	
013321-014446	Administration SALA3	<p><u>Clause 49 -- Registrar must not make residential address and identification number available for public inspection</u></p> <p>SALA3 sought clarification on technical arrangements regarding submission of documents to the Registrar of Companies ("the Registrar") during the transitional period with regard to clause 49(1)(a)(ii).</p>	
014447-015007	Administration Ms Miriam LAU	<p><u>Clause 50 -- Registrar may make protected address available for inspection</u></p> <p>Ms Miriam LAU's views that –</p> <p>(a) the Registrar should send a communication to the director of a company at his correspondence address to verify the validity of the address when there were complaints about ineffective communication with the director at the address; and</p> <p>(b) such action of the Registrar should be set out in the relevant practice note of the Companies Registry</p> <p>The Administration's response that, under clause 54, disclosure of a protected address could be made under an order of the Court on the application of a creditor or member of the company, or any other person appearing to the Court to have a sufficient interest</p>	

Time marker	Speaker	Subject(s)	Action required
		Request for the Administration to consider Ms Miriam LAU's suggestions	The Administration to take action as in paragraph 2(i) of the minutes
015008-020059	Administration Ms Miriam LAU SALA3	<p><u>Clause 51 -- Provision supplementary to section 50</u></p> <p>Ms Miriam LAU's enquiry on the justification for the prescribed period of five years under clause 51(6), and the Administration's response that reference had been made to the United Kingdom Companies Act 2006 ("UKCA 2006") in making the provision</p> <p>SALA3's enquiry about the reason to require the company to inform the Registrar under clause 51 about any change to the addresses of its directors instead of placing the responsibility on the directors as provided under UKCA 2006</p> <p>Ms Miriam LAU's view that it would be unfair to hold the company responsible, as it would be difficult to ensure a director would inform the company about any change to his address</p> <p>The Administration's response that --</p> <p>(a) the company was only required to inform the Registrar about the change when the company had received a notice about the change from the concerned director; and</p> <p>(b) there were provisions under Part 12 of the Companies Bill ("CB") to require a director to inform the company about any change to his address</p>	
020100-020502	Mr Jeffrey LAM Administration Chairman	<p>Mr Jeffrey LAM's view that it was necessary to provide clearly in CB the responsibilities of a company and its directors for complying with the relevant requirements</p> <p>The Administration's response that the directors and the company would be held</p>	

Time marker	Speaker	Subject(s)	Action required
		responsible for complying with different requirements under CB as appropriate The Chairman's view that during the clause-by-clause examination of the Bill, members might express their views on respective responsible party for the requirements under each clause	
020503-020552	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
14 September 2012