

立法會
Legislative Council

LC Paper No. CB(1)2579/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the sixteenth meeting held on
Tuesday, 11 October 2011, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
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, GBS, 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 Starry LEE Wai-king, JP (Deputy Chairman)
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 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 Kitty TSUI
Senior Solicitor (Company Law Reform)
Companies Registry

Ms Margaret CHAN
Solicitor (Company Law Reform)
Companies Registry

Ms Fanny LAM
Assistant Registry Manager (New Companies)
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

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(1)2948/10-11(01) -- Comparison Table for
Part 3 -- Company
Formation and Related
Matters, and Re-registration
of Company
- 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

Action

- 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)1879/10-11(03) -- Administration's paper on Part 2 and Part 12 of the Companies Bill
- 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)

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 --

Clause 53 -- Permitted use or disclosure of protected information by Registrar

- (a) the entities to be prescribed under the subsidiary legislation to be made under clause 53(4) to whom protected information might be disclosed;

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

- (b) the implementation of the measures to be introduced to withhold the residential addresses and identification numbers of company directors from public inspection;

Clause 54 -- Disclosure under order of Court

- (c) differences between clauses 50(1) and 54(1) for the Registrar of Companies to disclose the protected addresses for public inspection;

Clause 58 -- Immunity

Action

- (d) the scope of immunity to be provided to outside contractors in the performance of functions under the Companies Bill ("CB");

Penalties for offences

- (e) a summary of the exercise conducted to align the penalty levels for offences of similar nature under CB, including the rationale for the changes to be introduced, comparison of the penalties for offences with those in the Companies Ordinance, and comparison with the penalties for comparable offences in other ordinances;

Clause 98 -- Registrar's licence to dispense with "Limited" etc.

- (f) the number of companies issued with the licence to dispense with the use of the word "limited" in its name in the past few years and the nature of business of such companies; and

Clause 112 -- Transaction or act binds company despite limitation in articles etc.

Clause 113 -- Transaction or act involving directors or their associates is voidable

Clause 114 -- Section 112 not to apply to certain cases

- (g) supplementary information on clauses 112 to 114, and whether they were consistent with the common law and, in particular, the *Turquand's rule*.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 18 October 2011 at 10:45 am to meet with the Administration.

4. There being no other business, the meeting ended at 6:02 pm.

Council Business Division 1
Legislative Council Secretariat
14 September 2012

Bills Committee on Companies Bill

**Proceedings of the sixteenth meeting
on Tuesday, 11 October 2011, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001-000631	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>			
000632-000843	Administration	<u>Clause 52 -- Registrar must not use or disclose protected information</u> <u>Clause 53 -- Permitted use or disclosure of protected information by Registrar</u> <u>Clause 54 -- Disclosure under order of Court</u> Briefing by the Administration on the above clauses	
000844-001334	Mr Andrew LEUNG Mr WONG Ting-kwong Administration	<u>Clause 53 -- Permitted use or disclosure of protected information by Registrar</u> Enquires on the entities to be prescribed under the subsidiary legislation to be made under clause 53(4) to whom protected information might be disclosed The Administration's response that -- (a) tentatively the prescribed entities would include specified public authorities and regulators, liquidators and provisional liquidators, members of the relevant companies, etc., and (b) it would provide supplementary information to the Bills Committee	The Administration to take action as in paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
001335-001404	Administration	<u>Clause 55 -- Extent of prohibition</u> Briefing on the clause	
001405-001855	Mr Andrew LEUNG Mr Jeffrey LAM Administration	<u>Clause 54 -- Disclosure under order of Court</u> Discussion on the clause	
001856-002739	Ms Audrey EU Administration	<u>Clause 46 -- Information excluded from public inspection by law or court order</u> <u>Clause 47 -- Registrar may withhold residential address and identification number from public inspection</u> <u>Clause 50 -- Registrar may make protected address available for inspection</u> <u>Clause 51 -- Provision supplementary to section 50</u> Discussion on the above clauses	
002740-010727	Ms Miriam LAU Administration Mr James TO Mr Albert HO Mr Andrew LEUNG Mr Jeffrey LAM Chairman	<u>Clause 43 -- Registrar must make Companies Register available for public inspection</u> <u>Clause 47 -- Registrar may withhold residential address and identification number from public inspection</u> <u>Clause 50 -- Registrar may make protected address available for inspection</u> <u>Clause 51 -- Provision supplementary to section 50</u> <u>Clause 53 -- Permitted use of disclosure of protected information by Registrar</u> <u>Clause 54 -- Disclosure under order of Court</u> Discussion on the above clauses Members' views that withholding of directors' residential addresses from public inspection was appropriate to protect personal privacy but there should not be across the board withholding of all protected information as disclosure of protected information might be required for preparation of legal documents or instituting legal proceedings The Chairman's request for the	The Administration to

Time marker	Speaker	Subject(s)	Action required
		Administration to provide information about the measures and their operation under the Companies Bill ("CB") for withholding the residential addresses and identification numbers of company directors from public inspection	take action as in paragraph 2(b) of the minutes
010728-011226	Mr James TO Administration	<u>Clause 54 -- Disclosure under order of Court</u> Discussion on the implementation of the clause	
011227-011942	Ms Miriam LAU Mr Andrew LEUNG Administration	<u>Clause 47 -- Registrar may withhold residential address and identification number from public inspection</u> Discussion on the clause	
011943-012624	Mr James TO Administration	<u>Clause 54 -- Disclosure under order of Court</u> Discussion on the circumstances under which the Court might order the Registrar of Companies ("the Registrar") to disclose protected information Request for the Administration to provide information to explain the differences between clause 50(1), under which the Registrar may make the protected addresses available for public inspection, and clause 54(1)	The Administration to take action as in paragraph 2(c) of the minutes
012625-013009	Administration	<u>Clause 55 -- Extent of prohibition</u> <u>Clause 56 -- Registrar may certify delivery or non-delivery of documents</u> <u>Clause 57 -- Registrar not responsible for verifying information</u> <u>Clause 58 -- Immunity</u> <u>Clause 59 -- Discrepancy between document and certified translation</u> Briefing on the above clauses	
013010-013651	Ms Audrey EU Administration Chairman	<u>Clause 58 -- Immunity</u> Ms Audrey EU's view that a supplier/contractor engaged by the Registrar	

Time marker	Speaker	Subject(s)	Action required
		<p>should be liable for negligent actions/omission in the performance of functions under CB</p> <p>Request for the Administration to provide information to clarify the scope of immunity provided to outside contractor under the clause</p>	<p>The Administration to take action as in paragraph 2(d) of the minutes</p>
013652-014356	<p>Administration Mr Andrew LEUNG Ms Audrey EU Senior Assistant Legal Adviser 3 ("SALA3")</p>	<p><u>Clause 59 -- Discrepancy between document and certified translation</u> <u>Clause 60 -- Offences for destruction etc. of registers, books or documents</u></p> <p>Discussion on the above clauses</p>	
014357-014532	Administration	<p><u>Schedule 10</u> (Transitional and Saving Provisions for Part 2) <i>Section 2 - Office of Registrar</i></p> <p>Briefing on the clause</p>	
<i>Break (014533- 015759)</i>			
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 3 of the Bill (LC Paper No. CB(1)2948/10-11(01))</u></p>			
015800-020710	Administration	<p><u>Clause 61 -- Types of companies</u> <u>Clause 62 -- Formation of company</u> <u>Clause 63 -- Content of incorporation form</u> <u>Clause 64 -- Signing of incorporation form</u> <u>Clause 65 -- Statement of compliance to be contained in incorporation form</u> <u>Clause 66 -- Issue of certificate of incorporation on registration</u> <u>Clause 67 -- Conclusiveness of certificate of incorporation</u> <u>Clause 68 -- Effect of incorporation</u> <u>Clause 69 -- Delivery of director's written consent</u> <u>Clause 70 -- Articles prescribing regulations for company</u> <u>Clause 71 -- Language of articles</u> <u>Clause 72 -- Form of articles</u></p> <p>Briefing on the above clauses</p>	

Time marker	Speaker	Subject(s)	Action required
020711-021119	Chairman Administration Mr Andrew LEUNG	<p><u>Clause 69 -- Delivery of director's written consent</u></p> <p>Enquiry about increases in the maximum fine and the daily default fine for the offence under clause 69(2)</p> <p>The Administration's response that it had conducted an exercise to align the penalty levels for offences of similar nature under CB</p> <p>Request for the Administration to provide information on the above exercise, including the rationale for the changes to be introduced, comparison with the existing penalties under the Companies Ordinance and CB, and comparison with comparable offences in other ordinances</p>	The Administration to take action as in paragraph 2(e) of the minutes
021120-022434	Administration SALA 3 Ms Miriam LAU Ms Audrey EU	<p><u>Clause 73 -- Financial Secretary may prescribe model articles</u></p> <p><u>Clause 74 -- Adoption of model articles</u></p> <p><u>Clause 75 -- Application of model articles to limited company</u></p> <p>Briefing on the above clauses</p> <p>Discussion on clause 75</p>	
022435-022750	Administration SALA3	<p><u>Clause 76 -- Company name</u></p> <p><u>Clause 77 -- Company's objects</u></p> <p><u>Clause 78 -- Members' liabilities</u></p> <p><u>Clause 79 -- Liabilities or contributions of members of limited company</u></p> <p><u>Clause 80 -- Capital and initial shareholdings</u></p> <p><u>Clause 81 -- Effect of articles</u></p> <p>Briefing on the above clauses</p> <p>The Administration's response to SALA3's enquiry that matters relating to the capital duty payable by a company upon its registration would be dealt with under Part 4 of CB</p>	

Time marker	Speaker	Subject(s)	Action required
022751-024031	Administration SALA 3 Chairman Ms Audrey EU	<p><u>Clause 82 -- Company may alter articles</u> <u>Clause 83 -- Alteration by special resolution or ordinary resolution</u> <u>Clause 84 -- Alteration of company's objects</u> <u>Clause 85 -- Alteration of certain articles by existing company</u> <u>Clause 86 -- Application to Court to cancel alteration</u></p> <p>Briefing on the above clauses</p> <p>Discussion on the relation between clauses 76 to 81 and nominal value of share, share capital, capital structure and variation of class rights</p>	
024032-024736	Administration Chairman Ms Miriam LAU	<p><u>Clause 87 -- Certain alterations not binding on members</u> <u>Clause 88 -- Company must incorporate alteration into articles</u> <u>Clause 89 -- Alteration affecting status of private company</u> <u>Clause 90 -- Alteration affecting status of public company</u> <u>Clause 91 -- Notifying Registrar of alteration by order of Court</u> <u>Clause 92 -- Notifying Registrar of alteration by Ordinance</u></p> <p>Briefing on the above clauses</p> <p>Discussion on the offence under clause 89 and penalty to be imposed on the offender</p>	
024737-025315	Administration Ms Audrey EU Administration	<p><u>Clause 93 -- Conditions of memorandum of association of existing company to be regarded as provisions of articles</u> <u>Clause 94 -- Articles of company limited by guarantee</u> <u>Clause 95 -- Company must not be registered by certain names</u> <u>Clause 96 -- Financial Secretary may specify word or expression for section 95(2)(b)</u> <u>Clause 97 -- Limited company must not be registered without "Limited" as last word of name etc.</u> <u>Clause 98 -- Registrar's licence to dispense</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>with "Limited" etc.</u> <u>Clause 99 -- Terms and conditions of licence</u> <u>Clause 100 -- Effect of licence</u> <u>Clause 101 -- Revocation of licence</u></p> <p>Briefing on the above clauses</p> <p>Enquiry on clause 98 about the number of companies issued with the licence to dispense with the use of the word "limited" in its name</p> <p>The Administration's response that the number was small in each year and it would provide more information after the meeting</p>	<p>The Administration to take action as in paragraph 2(f) of the minutes</p>
<p>025316- 025759</p>	<p>Administration Ms Audrey EU Chairman Ms Miriam LAU SALA3</p>	<p><u>Clause 102 -- Company may change name by special resolution</u> <u>Clause 103 -- Registrar may direct company to change same or similar name etc.</u> <u>Clause 104 -- Registrar may direct company to change misleading or offensive name etc.</u> <u>Clause 105 -- Registrar may change company name in case of failure to comply with direction</u></p> <p>Briefing and discussion on the above clauses</p>	
<p>025800- 030028</p>	<p>Administration SALA 3</p>	<p><u>Clause 106 -- Determining whether name is same as or similar to another name</u> <u>Clause 107 -- Members of company</u> <u>Clause 108 -- Members of holding company</u> <u>Clause 109 -- Notifying Registrar of increase in number of members of company limited by guarantee</u></p> <p>Briefing on the above clauses</p> <p>Clarification on the time limit for a company to give notification to the Registrar under clause 109</p>	

Time marker	Speaker	Subject(s)	Action required
030029-030303	Administration	<u>Clause 110 -- Company's capacity etc.</u> <u>Clause 111 -- Company's exercise of powers limited by articles</u> <u>Clause 112 -- Transaction or act binds company despite limitation in articles etc.</u> <u>Clause 113 -- Transaction or act involving directors or their associates is voidable</u> <u>Clause 114 -- Section 112 not to apply to certain cases</u> <u>Clause 115 -- No constructive notice of matters disclosed in articles etc.</u> Briefing on the above clauses	
030304-032746	Ms Miriam LAU Administration Ms Audrey EU Chairman	<u>Clause 112 -- Transaction or act binds company despite limitation in articles etc.</u> <u>Clause 113 -- Transaction or act involving directors or their associates is voidable</u> Discussion on the above clauses	
032747-032901	Administration Ms Miriam LAU Chairman Ms Audrey EU	<u>Clause 114 -- Section 112 not to apply to certain cases</u> <u>Clause 115 -- No constructive notice of matters disclosed in articles etc.</u> Discussion on the above clauses	
032902-033240	Ms Audrey EU Chairman	Request for the Administration to provide information on whether clauses 112 to 114 were consistent with the common law and, in particular, the <i>Turquand's rule</i> Date of next meeting	The Administration to take action as in paragraph 2(g) of the minutes