

立法會
Legislative Council

LC Paper No. CB(1)2622/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the nineteenth meeting held on
Friday, 11 November 2011, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Starry LEE Wai-king, JP (Deputy Chairman)
Hon Albert HO Chun-yan
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

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
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 Maurice LOO
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

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

Ms Marianna YU
Deputy Registry Manager (Registration)
Companies Registry

Miss Grace LEUNG
Senior Solicitor (Company Law Reform)
Companies Registry

Mr CHUNG Wai-tim
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

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I Meeting with the Administration

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)225/11-12(02) -- Comparison Table for Part 5 -- Transactions in relation to Share Capital
- LC Paper No. CB(1)278/11-12(01) -- Comparison Table for Part 6 -- Distribution of Profits and Assets
- LC Paper No. CB(1)278/11-12(02) -- Comparison Table for Part 7 -- Debentures
- LC Paper No. CB(1)278/11-12(03) -- Comparison Table for Part 8 -- Registration of Charges
- LC Paper No. CB(3)412/10-11 -- The Bill (Parts 5 to 8))

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)2066/10-11(01) -- Administration's paper on Part 4 and Part 5 of the Companies Bill

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- LC Paper No. CB(1)2175/10-11(01) -- Administration's paper on Parts 6 to 8 of the Companies Bill
- LC Paper No. CB(1)2439/10-11(04) -- Administration's response to issues raised by members at the meeting on 19 May 2011 in relation to Parts 4, 5 and 9
- LC Paper No. CB(1)2439/10-11(05) -- Administration's response to issues raised by members at the meeting on 3 June 2011 in relation to Parts 6 and 7
- LC Paper No. CB(1)2636/10-11(02) -- Administration's response to issues raised by members at the meetings on 6 May and 17 June 2011 in relation to Parts 5, 6, 9 and 13
- LC Paper No. CB(1)2756/10-11(02) -- Administration's response to issues raised by members at the meeting on 8 July 2011 in relation to Part 5)

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 277 -- Exception for loans to employees

- (a) to consider whether it was necessary to impose conditions under clause 277 to prevent a company from circumventing the financial assistance prohibition by relegating a "director" to an "employee", and then re-appointing the "employee" a director after the acquisition of shares;

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Clause 304 -- Register of debenture holders

- (b) to provide the justifications for the requirements of entering the names and addresses of holders of debentures in the "register of debenture holders" and making the register available for public inspection;
- (c) to advise on the views of the Privacy Commissioner for Personal Data on the disclosure of the above information;

Clause 306 -- Right to inspect and request copy

- (d) to consider whether clause 306(8) was necessary given that clause 306(7) had already provided the Court with a wide discretion to make an order directing that a copy of the register of debenture holders of a company or any part of it be provided to the person requesting it;

Clause 310 -- Keeping of branch register

- (e) to clarify the meaning of "from time to time" under clause 310(3)(b) and consider providing a clear timeframe for the relevant requirement;

Clause 318 -- Registration of transfer or refusal of registration

- (f) to consider introducing a new requirement for a company to give reasons for a refusal to register a transfer of debentures upon request;

Clause 328 -- Court may order meeting of debenture holders

- (g) to advise on the requirements in overseas common law jurisdictions regarding debenture holders' right to apply to the Court for convening a meeting to give directions to the trustee; and

Clause 330 -- Immunity of trustees for debenture holders

- (h) to provide the justifications for the immunity provided to trustees in respect of liability for anything done (or not done) where they acted in accordance with the directions given in a

Action

meeting of debenture holders, and information on relevant overseas practices

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 18 November 2011 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 11:45 am.

Council Business Division 1
Legislative Council Secretariat
25 September 2012

Bills Committee on Companies Bill

**Proceedings of the nineteenth meeting
on Friday, 11 November 2011, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001-000443	Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 5 of the Bill (LC Paper No. CB(1)225/11-12(02))</u>			
000444-000615	Administration	<u>Clause 273 -- General exceptions</u> <u>Clause 274 -- Principal purpose exception</u> <u>Clause 275 -- Exception for money lending businesses</u> Briefing on the above clauses	
000616-001501	Administration Chairman Mr Andrew LEUNG Senior Assistant Legal Adviser 3 ("SALA3")	<u>Clause 276 -- Exception for employee share schemes</u> <u>Clause 277 -- Exception for loans to employees</u> Discussion on the above clauses Mr Andrew LEUNG's concerns about – (a) a company might circumvent the financial assistance prohibition by relegating a "director" to an "employee", and re-appoint the "employee" a director after the acquisition of shares; and (b) in case a loan had been made to an eligible employee and the employee was subsequently appointed a director but the loan or part of it remained outstanding, whether the company would need to call back the loan from that director	

Time marker	Speaker	Subject(s)	Action required
		Request for the Administration to consider whether it was necessary to impose conditions under clause 277 to prevent a company from circumventing the financial assistance prohibition by relegating a "director" to an "employee", and then re-appointing the "employee" a director after the acquisition of shares	The Administration to take action as in paragraph 2(a) of the minutes
001502-001821	Administration	<u>Clause 278 -- Special restriction for listed companies</u> <u>Schedule 10</u> (Transitional and Saving Arrangements for Part 5) <i>Sections 43-48</i> Briefing on the above clauses	
<i>(Members noted that clauses 279 to 285 had been discussed at the meeting on 4 November 2011)</i>			
<u>Clause-by-clause examination of the Bill</u> <u>Part 6 of the Bill (LC Paper No. CB(1)225/11-12(02))</u>			
001822-002345	Administration Mr Andrew LEUNG Chairman SALA3	<u>Clause 286 -- Interpretation</u> Discussion on the clause Enquiries about "uncalled share capital" and "financial items"	
002346-002657	Administration Mr Andrew LEUNG Chairman	<u>Clause 287 -- Realized profits and losses</u> <u>Clause 288 -- Certain amount to be regarded as realized profit or loss</u> <u>Clause 289 -- Certain amount relating to insurance company with long term business to be regarded as realized profit or loss</u> The Administration's briefing on the above clauses Discussion on the revaluation of financial assets (clauses 288 and 289)	

Time marker	Speaker	Subject(s)	Action required
002658-003451	Administration	<p><u>Clause 290 -- Distribution in kind: certain amount to be regarded as realized profit</u> <u>Clause 291 -- Application of Part</u> <u>Clause 292 -- Saving for other restraints on distribution</u> <u>Clause 293 -- Prohibition on certain distributions</u> <u>Clause 294 -- Listed company may only make certain distributions</u> <u>Clause 295 -- Restriction on application of unrealized profits</u> <u>Clause 296 -- Financial Secretary may modify or exempt provisions in relation to investment company</u> <u>Clause 297 -- Consequences of unlawful distribution</u> <u>Clause 298 -- Justification of distribution by reference to financial statements</u> <u>Clause 299 -- Successive distributions</u></p> <p>Briefing on the above clauses</p>	
003452-004839	Administration Mr Albert HO Chairman Assistant Legal Adviser 2 ("ALA2")	<p><u>Clause 300 -- Last annual financial statements specified for purposes of section 298</u> <u>Clause 301 -- Interim financial statements specified for purposes of section 298</u> <u>Clause 302 -- Initial financial statements specified for purposes of section 298</u> <u>Schedule 10</u> (Transitional and Saving Arrangements for Part 6) <i>Sections 49-50</i></p> <p>The Administration's briefing on the above clauses</p> <p>Mr Albert HO's enquiry on the applicability of an interim financial statement, an annual financial statement and an initial financial statement in making a distribution</p> <p>ALA2 drew members' attention to the view of the Law Society of Hong Kong on clause 301 (LC Paper No. CB(1)339/11-12(01)).</p>	

Time marker	Speaker	Subject(s)	Action required
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 7 of the Bill (LC Paper No. CB(1) 278/11-12(02))</u></p>			
<p>004840-005917</p>	<p>Administration Mr Andrew LEUNG Chairman Mr WONG Ting-kwong</p>	<p><u>Clause 303 -- Interpretation</u> <u>Clause 304 -- Register of debenture holders</u> <u>Clause 305 -- Place where register must be kept available for inspection</u></p> <p>Discussion on the above clauses</p> <p>Members' concerns on the privacy issues involved in allowing the register of debenture holders to be open for public inspection</p> <p>Request for the Administration to provide --</p> <p>(a) the justifications for the requirements of entering the names and addresses of holders of debentures in the "register of debenture holders" and making the register available for public inspection; and</p> <p>(b) the views of the Privacy Commissioner for Personal Data on the disclosure of the above information</p>	<p>The Administration to take action as in paragraphs 2(b) and 2(c) of the minutes</p>
<p>005918-012905</p>	<p>Mr Albert HO Administration Mr Andrew LEUNG SALA3 ALA2 Mr WONG Ting-kwong Mr Ronny TONG Ms Audrey EU Chairman</p>	<p><u>Clause 306 -- Right to inspect and request copy</u></p> <p>Discussion on the right to inspect and request a copy of the register of debenture holders of a company and abuses of the right</p> <p>Request for the Administration to consider whether clause 306(8) was necessary given that clause 306(7) had already provided the Court with a wide discretion to make an order directing that a copy of the register of debenture holders of a company or any part of it be provided to the person requesting it</p>	<p>The Administration to take action as in paragraph 2(d) of the minutes</p>
<p>012906-013210</p>	<p>Administration</p>	<p><u>Clause 307 -- Consequences of contravening requirements as to register owing to other person's default</u></p> <p>Briefing on the clause</p>	

Time marker	Speaker	Subject(s)	Action required
013211-013605	Administration SALA 3 Mr Albert HO	<u>Clause 308 -- Power to close register of debenture holders</u> Mr Albert HO and SALA3 seeking clarification on the clause	
013606-013901	Administration	<u>Clause 309 -- Branch register of debenture holders</u> <u>Clause 310 -- Keeping of branch register</u> <u>Clause 311 -- Transactions in debentures registered in branch register</u> <u>Clause 312 -- Discontinuance of branch register</u> Briefing on the above clauses	
013902-014213	Chairman Administration Mr Andrew LEUNG	<u>Clause 310 -- Keeping of branch register</u> Discussion on issues related to compliance with the clause Request for the Administration to clarify the meaning of "from time to time" under clause 310(3)(b) and consider providing a clear timeframe for the relevant requirement	The Administration to take action as in paragraph 2(e) of the minutes
014214-014926	Administration Chairman	<u>Clause 313 -- Return of allotment</u> <u>Clause 314 -- Registration of allotment</u> <u>Clause 315 -- Issue of debenture or certificate for debenture stock on allotment</u> <u>Clause 316 -- Court order for delivery of debenture or certificate for debenture stock</u> <u>Clause 317 -- Requirement for instrument of transfer</u> <u>Clause 318 -- Registration of transfer or refusal of registration</u> <u>Clause 319 -- Certification of transfer</u> <u>Clause 320 -- Issue of debenture or certificate for debenture stock on transfer</u> <u>Clause 321 -- Court order for delivery of debenture or certificate for debenture stock</u> Briefing on the above clauses	
014927-015623	Chairman ALA 2	<u>Clause 318 -- Registration of transfer or refusal of registration</u>	

Time marker	Speaker	Subject(s)	Action required
	Administration Ms Audrey EU	<p>Discussion on the situations in which a company could refuse to register a transfer of debentures</p> <p>ALA2's remarks that there was inconsistency between clauses 318 and 146 (under clause 146, a company is required to provide a statement of the reasons for its refusal to register a transfer of shares upon the request of the transferee/transferor but there is no such requirement under clause 318)</p> <p>Request for the Administration to consider introducing a new requirement for a company to give reasons for a refusal to register a transfer of debentures upon request</p>	The Administration to take action as in paragraph 2(f) of the minutes
015624-015906	Administration	<p><u>Clause 322 -- Evidence of grant of probate etc.</u></p> <p><u>Clause 323 -- Form of register of holders of debentures kept under instrument made by company</u></p> <p><u>Clause 324 -- Perpetual debentures</u></p> <p><u>Clause 325 -- Power to reissue redeemed debentures</u></p> <p><u>Clause 326 -- Deposit of debentures to secure advances</u></p> <p><u>Clause 327 -- Specific performance of contracts to subscribe for debentures</u></p> <p>Briefing on the above clauses</p>	
015907-020232	Administration Chairman	<p><u>Clause 328 -- Court may order meeting of debenture holders</u></p> <p>The Chairman's enquiry about the requirements in other common law jurisdictions regarding debenture holders' right to apply to the Court for convening a meeting to give directions to the trustee</p>	The Administration to take action as in paragraph 2(g) of the minutes
020233-020310	Administration	<p><u>Clause 329 -- Liability of trustees for debenture holders</u></p> <p>Briefing on the clause</p>	

Time marker	Speaker	Subject(s)	Action required
020311-020544	Administration Ms Audrey EU	<u>Clause 330 -- Immunity of trustees for debenture holders</u> Ms Audrey EU's enquiry on the justifications to provide immunity to trustees in respect of their liability for anything done (or not done) where they had acted in accordance with the directions given in a meeting of debenture holders, and the relevant overseas practices	The Administration to take action as in paragraph 2(h) of the minutes
020545-020800	Administration	<u>Schedule 10</u> (Transitional and Saving Arrangements for Part 7) <u>Sections 51-62</u> Briefing on the above clauses	
<i>Break (020801- 022731)</i>			
<u>Clause-by-clause examination of the Bill</u> <u>Part 8 of the Bill (LC Paper No. CB(1) 278/11-12(03))</u>			
022732-023923	Administration	<u>Clause 331 -- Interpretation</u> <u>Clause 332 -- Application of Part</u> <u>Clause 333 -- Specified charge</u> <u>Clause 334 -- Company must register specified charge created by it</u> <u>Clause 335 -- Registered non-Hong Kong company must register specified charge created by it</u> <u>Clause 336 -- Consequences of contravention of section 334 or 335</u> <u>Clause 337 -- Company must register charge existing on property acquired</u> Briefing on the above clauses	
023924-024337	Administration Mr Andrew LEUNG	<u>Clause 338 -- Registered non-Hong Kong company must register charge existing on property acquired</u> Discussion on whether the responsibility for delivering the charge for registration should be taken up by the chargee instead of the company	

Time marker	Speaker	Subject(s)	Action required
024338-030218	Administration Chairman Ms Miriam LAU	<p><u>Clause 339 -- Registered non-Hong Kong company must register charge existing on property on date of company's registration under Part 16</u></p> <p><u>Clause 340 -- Company or registered non-Hong Kong company must register particulars of issue of debentures</u></p> <p><u>Clause 341 -- Company or registered non-Hong Kong company must register particulars of commission etc. in relation to debentures</u></p> <p><u>Clause 342 -- Consequences of contravention of section 341</u></p> <p><u>Clause 343 -- Certificate of registration</u></p> <p><u>Clause 344 -- Notification to Registrar of payment of debt, release, etc.</u></p> <p><u>Clause 345 -- Extension of time for registration</u></p> <p><u>Clause 346 -- Rectification of registered particulars</u></p> <p><u>Clause 347 -- Notice of appointment of receiver or manager</u></p> <p><u>Clause 348 -- Notice of mortgagee entering into possession of property</u></p> <p><u>Clause 349 -- Notice of cessation of appointment of receiver or manager or mortgagee going out of possession of property, etc.</u></p> <p><u>Clause 350 -- Obligation to keep copies of instruments creating charges</u></p> <p><u>Clause 351 -- Obligation of company to keep register of charges</u></p> <p><u>Clause 352 -- Obligation of registered non-Hong Kong company to keep register of charges</u></p> <p><u>Clause 353 -- Notification of place where register of charges is kept</u></p> <p>Briefing on the above clauses</p> <p>The Chairman's enquiry about the rationale for changing the penalties under clause 351</p> <p>The Administration's response that it would provide a paper on the penalties for offences under the Companies Bill including the details of the exercise conducted to align the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>various penalties as appropriate, the rationale for the changes to be introduced, a comparison of the penalties for similar offences in CB and the Companies Ordinance</p> <p>Ms Miriam LAU's enquiry about the definition of "responsible person" of a company in clause 351(3) and whether the Administration would amend the definition of "responsible person"</p> <p>The Administration's response that the revised definition would be discussed when the Bills Committee scrutinized Part 1 of the Bill</p>	
030219-030352	Administration	<p><u>Clause 354 -- Instruments and register open to public inspection</u></p> <p>Briefing on the clause</p>	
030353-030527	Administration Mr WONG Ting-kwong	<p><u>Clause 355 -- Financial Secretary may make regulations for purposes of this Division</u></p> <p>The Administration's confirmation that the regulations to be made by the Financial Secretary would be subject to the negative vetting procedure of LegCo</p>	
030528-031457	Administration Chairman SALA 3	<p><u>Schedule 10</u> (Transitional and Saving Arrangements for Part 8) <i>Sections 63-72</i></p> <p>Discussion on the arrangement for registration of charge during the transitional period</p>	
031458-031518	Chairman	Date of next meeting	