

立法會
Legislative Council

LC Paper No. CB(1)2623/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twentieth meeting held on
Friday, 18 November 2011, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Starry LEE Wai-king, JP (Deputy Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, 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
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Andrew LEUNG Kwan-yuen, GBS, 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 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)357/11-12(01) -- Administration's response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5
- LC Paper No. CB(1)331/11-12(01) -- Comparison Table for Part 9 -- Accounts and Audit
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 4, Part 5, Part 9 and Schedule 10)

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)1879/10-11(04) -- Administration's paper on Part 9 of the Companies Bill
- LC Paper No. CB(1)2066/10-11(01) -- Administration's paper on Part 4 and Part 5 of the Companies Bill

Action

- LC Paper No. CB(1)2132/10-11(03) -- Administration's response to issues raised by members at the meeting on 6 May 2011 in relation to Part 9 and Part 12
- LC Paper No. CB(1)2439/10-11(03) -- Administration's response to issues raised by members at the meetings on 6 and 13 May 2011 in relation to Part 9 and Part 12
- 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)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
- LC Paper No. CB(1)34/11-12(05) -- Comparison Table for Part 4 -- Share Capital
- LC Paper No. CB(1)225/11-12(02) -- Comparison Table for Part 5 -- Transactions in relation to Share Capital
- LC Papers No. CB(1)2928/10-11(01), (02), (03), (04), (05), (06), (07), (08), (09), (10), (11), (12), (13), (14) and (15) -- Submissions on preparation of simplified financial and directors' reports
- LC Paper No. CB(1)330/11-12(01) -- Views on preparation of simplified financial and directors' reports

Action

LC Paper No. CB(1)339/11-12(01) -- Summary of views of deputations made at the meeting on 9 April 2011 and the Administration's response)

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 146 -- Registration of transfer or refusal of registration

- (a) to consider whether the introduction of a right for the transferee or transferor of shares to be provided with reasons for a company's refusal to register a transfer of the company's shares was inconsistent with the rights of a private company to restrict the right of transfer, and to provide information regarding relevant court cases;

Division 2 (Reporting Exemption) of Part 9 (Clauses 358 to 362)

- (b) to consider whether members of a company which was qualified for preparing simplified reports should be provided with a statutory right to demand the company to prepare financial reports in accordance with the full Hong Kong Financial Reporting Standards;
- (c) to provide information on provisions in the Companies Bill ("CB") that offered protection to minority shareholders with respect to company records;
- (d) to improve the Chinese text of the description of M in the calculation formula in section 2(4) of Schedule 3, where M represented the aggregate of the number of the company's employees as at the end of each month during the financial year;
- (e) to consider other alternatives for determining M in the formula in section 2(4) of Schedule 3 so as to truly reflect the scale of the company;

Action

Clause 363 -- Financial year

- (f) to review whether it was necessary to allow a director to adjust the financial year end date by seven days; and

Clause 369 -- Company must keep accounting records

- (g) to clarify the difference between the terms "accounting records" (in CB) and "books of account" in the Companies Ordinance, and the implications of the change in terminology on contracts.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 25 November 2011 at 8:30 am to meet with the Administration.
4. There being no other business, the meeting ended at 12:19 pm.

Council Business Division 1
Legislative Council Secretariat
25 September 2012

Bills Committee on Companies Bill

**Proceedings of the twentieth meeting
on Friday, 18 November 2011, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000823-000903	Chairman	Opening remarks	
<u>Follow-up actions for the meetings held on 4 and 11 November 2011 relating to Part 4 (LC Paper No. CB(1)357/11-12(01))</u>			
000904-002206	Administration	Briefing on the paper (paragraphs 1 to 26)(clauses 135, 159, 167, 176, 191, 192, and section 27(3) of Schedule 10)	
002207-003024	Dr Philip WONG Administration Chairman	Discussion on paragraphs 17 to 20 of the paper (the threshold of 90% equity holding under clause 191(1) regarding merger relief and whether there should be different thresholds for listed and non-listed companies)	
<u>Administration's response to deputations' views on the Companies Bill (LC Paper No. CB(1)339/11-12(01))</u>			
003025-003609	Administration	Briefing on the Administration's response to deputations' views on Part 4 (Share Capital) of the Companies Bill ("CB")	
003610-005920	Dr Philip WONG Administration Senior Assistant Legal Adviser 3 ("SALA3") Chairman Ms Miriam LAU	Discussion on deputations' views on clause 146 (registration or refusal of registration of transfer of shares) and the Administration's response Members' concern that the requirement under the clause for companies to give reasons for their refusal to register a transfer of shares might be inconsistent with clause 10, under which a member's right to transfer shares of a private company was restricted Request for the Administration to provide information about relevant court cases in which the court ordered the provision of such reasons, and to reconsider whether the requirement was	The Administration to take action as in paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		necessary	
005921-010200	Administration	Briefing on the Administration's response to views of deputations on Part 4 of CB (continued) (LC Paper No. CB(1)339/11-12(01))	
<u>Follow-up actions for the meetings held on 4 and 11 November 2011 relating to Part 5 (LC Paper No. CB(1)357/11-12(01))</u>			
010201-011522	Administration	Briefing on the paper (paragraphs 27 to 40)(clauses 213, 218, 240, 256, 261, 271 and 277)	
011523-012224	Assistant Legal Adviser 2 ("ALA2") Chairman Administration Dr Philip WONG	<p>Discussion on paragraphs 41 to 49 of the paper (use of notes in CB)</p> <p>Members' concerns about the legal status of examples cited in some of the notes, in particular, the use of examples might create confusion as they were non-exhaustive</p> <p>The Administration's response that --</p> <p>(a) as a general approach, the Administration would convert a note containing examples into an " example"; and</p> <p>(b) an " example" would not be covered by clause 2(6) and would be construed together with the provisions to which it was attached and be given legal effect accordingly</p>	
<u>Administration's response to deputations' views on the Companies Bill (LC Paper No. CB(1)339/11-12(01))</u>			
012225-015017	Administration Dr Philip WONG Chairman	Discussion on deputations' views on Part 5 (transactions in relation to share capital) and the Administration's response	
<u>Follow-up actions for the meetings held on 4 and 11 November 2011 relating to Part 5 (LC Paper No. CB(1)357/11-12(01))</u>			
015018-020433	Mr Ronny TONG Administration ALA2 Ms Miriam LAU	<p>Discussion on paragraphs 41 to 49 of the paper (use of notes in CB)</p> <p>Discussion on the use of notes providing cross</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>reference between provisions, under clauses 280 and 281</p> <p>Members' concerns about the legal status of examples incorporated in the provisions, and whether the examples provided in a note should be converted into "examples" and become part of the provisions of CB</p> <p>The Administration's response that it would provide a paper about the overall review of the use of notes and examples in CB</p>	
<p><u>Administration's response to deputations' views on the Companies Bill (LC Paper No. CB(1)339/11-12(01))</u></p>			
020434-020556	Administration	Briefing on the Administration's response to views of deputations on clause 282 (Part 5 of CB)	
<p><i>Break (020557- 022211)</i></p>			
022212-022629	Chairman Administration	<p>The Administration's remarks that it was holding discussions with the Hong Kong Institute of Certified Public Accountants ("HKICPA") on further relaxation on the eligibility criteria for companies to prepare simplified financial and directors' reports ("simplified reports") according to the SME-financial reporting framework and standards promulgated by the Institute</p> <p>The Administration's advice that --</p> <p>(a) HKICPA would conduct a consultation shortly on the eligibility criteria for making simplified reports; and</p> <p>(b) the criteria to be prescribed by HKICPA and in CB would align</p> <p>The Chairman's views that HKICPA's consultation should cover not only members of the accounting profession but also chambers of commerce/business organizations</p>	

Time marker	Speaker	Subject(s)	Action required
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 9 of the Bill (LC Paper No. CB(1)331/11-12(01))</u></p>			
<p>022630- 022819</p>	<p>Administration</p>	<p><u>Clause 356 -- Interpretation</u> <u>Clause 357 -- Application in relation to financial year beginning on or after commencement date of relevant provision etc.</u></p> <p>Briefing on the above clauses</p>	
<p>022820- 025824</p>	<p>Administration Ms Miriam LAU Mr Ronny TONG Chairman SALA3</p>	<p><u>Clause 358 -- Company falling within reporting exemption</u> <u>Clause 359 -- Small private company</u> <u>Clause 360 -- Small guarantee company</u> <u>Clause 361 -- Group of small private companies</u> <u>Clause 362 -- Group of small guarantee companies</u> <u>Schedule 3 -- Specified Qualifying Conditions for Sections 359 to 362</u></p> <p>Discussion on the above clauses</p> <p>Members' concerns about --</p> <p>(a) protection of the interest of minority shareholders under the reporting exemption proposals, and</p> <p>(b) the calculation of the average number of a company's employees during a financial year (section 2(4) of Schedule 3)</p> <p>Request for the Administration to --</p> <p>(a) consider whether members of a company which was qualified for preparing simplified reports should be provided with a statutory right to demand the company to prepare financial reports in accordance with the full Hong Kong Financial Reporting Standards;</p> <p>(b) provide information on provisions in CB that offered protection to minority shareholders with respect to company records;</p>	<p>The Administration to take action as in paragraphs 2(b) to 2(e) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(c) to improve the Chinese text of the description of M in the calculation formula in section 2(4) of Schedule 3, where M represented the aggregate of the number of the company's employees as at the end of each month during the financial year; and</p> <p>(d) to consider other alternatives for determining M in the formula in section 2(4) of Schedule 3 so as to truly reflect the scale of a company</p>	
025825-031527	Administration Mr Ronny TONG Dr Philip WONG Mr Jeffrey LAM Chairman	<p><u>Clause 363 -- Financial year</u> <u>Clause 364 -- Accounting reference period</u> <u>Clause 365 -- Primary accounting reference date</u> <u>Clause 366 -- Accounting reference date</u> <u>Clause 367 -- Alteration of accounting reference date</u></p> <p>Discussion on the above clauses and the significance of the accounting reference date, making reference to the Carrian case</p> <p>Mr Ronny TONG's declaration that he was the legal representative of an auditor involved in the Carrian case</p> <p>Request for the Administration to review whether it was necessary to allow a director to adjust the financial year end date by seven days (clause 363)</p>	The Administration to take action as in paragraph 2(f) of the minutes
031528-033942	Administration Mr Ronny TONG Ms Audrey EU	<p><u>Clause 368 -- Interpretation</u> <u>Clause 369 -- Company must keep accounting records</u></p> <p>Discussion on the above clauses</p> <p>Enquiry about whether the change of the term "books of account" used in the Companies Ordinance ("CO") to "accounting records" in CB would affect parties' rights and obligations</p>	

Time marker	Speaker	Subject(s)	Action required
		Request for the Administration to provide information to clarify the difference between the terms "accounting records" (in CB) and "books of account" in the Companies Ordinance, and the implications of the change in terminology on contracts	The Administration to take action as in paragraph 2(g) of the minutes
033943-034729	Administration	<u>Clause 370 -- Where accounting records to be kept</u> <u>Clause 371 -- Director may obtain copies of accounting records during inspection</u> <u>Clause 372 -- Form of accounting records</u> <u>Clause 373 -- How long accounting records to be preserved</u> <u>Clause 374 -- Court may order accounting records to be inspected on director's behalf</u> <u>Clause 375 -- Directors must prepare financial statements</u> <u>Clause 376 -- General requirements for financial statements</u> Briefing on the above clauses	
034730-034900	Administration	Briefing on the Administration's response to deputations' views on Divisions 1 and 2 of Part 9 of CB (LC Paper No. CB(1) 339/11-12(01)) The Administration's remarks that it would consider the results of the further consultation to be conducted on the eligibility criteria for preparing simplified reports before finalizing the criteria	
034901-034910	Chairman	Date of next meeting	