

立法會
Legislative Council

LC Paper No. CB(1)2624/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twenty-first meeting held on
Friday, 25 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)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, 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 : Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Miriam LAU Kin-yeet, 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 Nick AU YEUNG
Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies
Companies Registry

Mrs Karen HO
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

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

Mr Simon CHEUNG
Senior Council Secretary (1)9

Action

I Meeting with the Administration

Clause-by-clause examination of the Bill

- (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 9 and Schedules 1 to 10)
- 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)

Other relevant papers

- (File Ref: CBT/17/2C
- LC Paper No. LS26/10-11 -- 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)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

Action

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 Papers No. -- Submissions on CB(1)2928/10-11(01), (02), (03), (04), (05), (06), (07), (08), (09), (10), (11), (12), (13), (14) and (15) 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)

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

Admin 2. The Bills Committee requested the Administration to take the following actions --

Division 2 of Part 9 (Reporting Exemption)

- (a) to consider conducting a consultation, in parallel with that to be launched by the Hong Kong Institute of Certified Public Accountants, on the eligibility criteria for companies to prepare simplified financial and directors' reports, and ensure that the consultation would be highly transparent as well as covering a wide range of stakeholders in the business sector;

Subsidiary legislations to be made under the Companies Bill

- (b) to prepare a summary of subsidiary legislation to be made under the Companies Bill to facilitate members' understanding of the matters to be covered therein ;

Clause 396 -- Auditor's duty to report

- (c) to consider revising the heading of the clause to better reflect the content of the provision;

Action

Clause 399 -- Offences relating to contents of auditor's report

- (d) to address members' concerns about (i) the scope of "the persons" in clause 399(2), which might be too wide to cover every employee and agent of the auditor who was eligible for appointment as auditor of the company; and (ii) the timeframe for prosecution of the offence if the "auditor" who prepared the auditor's report was a firm;

Clause 406 -- Avoidance of provisions protecting auditor from liability

- (e) to provide background information on stating expressly in clause 406(4) that a company was not prevented from taking out and keeping in force insurance for an auditor of the company and review the need of retaining the clause;

Clause 409 -- Cessation of office

- (f) to consider setting out a period for the auditor to notify the company of his cessation of office;

Clause 413 -- Cessation statement in relation to, and attendance at, general meeting

- (g) to review the drafting of clause 413(5) to improve its readability;

Clause 420 -- Directors must lay financial statements etc. before company in general meeting

- (h) to address the concern that a director appointed at the end of the period specified in clause 422 might be liable for other directors' failure to lay a financial statement before the company in the annual general meeting;

Clause 426 -- Company must send copies of financial statements etc. to members and others on demand

- (i) to consider providing a defence for a company under the clause, and to provide justifications for setting the maximum fine for an offence under this clause at level 5 and imposing a daily default fine of \$1,000;

Action

Clause 436 -- Additional copy of reports etc. to be sent by company

- (j) to review the timeframes set under clause 436(3) for a company to provide a copy of the reporting documents for a financial year upon a person's request;

Clause 437 -- Company must not send summary financial report under some circumstances

- (k) to improve the drafting of clause 437(1) so as to distinguish the case of a strict prohibition to send a copy of the summary financial report from a prohibition to send a copy of the summary financial report instead of a copy of the reporting documents; and

Clause 440 -- Voluntary revision of financial statements etc.

- (l) to improve the drafting of the clause to reflect the role of the auditor on the revision of a financial statement initiated by the directors.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 2 December 2011 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 12:34 pm.

Council Business Division 1
Legislative Council Secretariat
25 September 2012

Bills Committee on Companies Bill

**Proceedings of the twenty-first meeting
on Friday, 25 November 2011, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000524-000600	Chairman	Opening remarks	
<u>Clause-by-clause examination on the Bill</u> <u>Part 9 of the Bill (LC Paper No. CB(1)331/11-12(01))</u>			
000601-000843	Administration	<u>Clause 376 -- General requirements for financial statements</u> <u>Schedule 4 -- Accounting Disclosures</u> Briefing on the above clauses	
000844-003153	Mr Andrew LEUNG Administration Chairman Mr Jeffrey LAM Mr WONG Ting-kwong	<u>Division 2 of Part 9 (Reporting Exemption) (Clauses 358 to 362)</u> <u>Schedule 3 -- Specified Qualifying Conditions for Sections 359 to 362</u> Mr Andrew LEUNG's enquiry on the Administration's latest position on members' suggestion to relax the eligibility criteria for preparing simplified financial and directors' reports according to the SME-financial reporting framework and standards promulgated by the Hong Kong Institute of Certified Public Accountants ("HKICPA") ("simplified reports") The Administration's advice that -- (a) HKICPA would conduct a consultation in late November to seek public views on the eligibility criteria for preparing simplified reports; and (b) the Administration would take into consideration the views to be collected by HKICPA before finalizing its	

Time marker	Speaker	Subject(s)	Action required
		<p>position on the relaxation of the eligibility criteria</p> <p>The Chairman's views that HKICPA's consultation should cover not only members of the accounting profession but also other stakeholders, including chambers of commerce/business organizations</p> <p>The Chairman's and members' suggestion that --</p> <p>(a) the Administration should conduct its own consultation on the subject because the exemption criteria concerned public interest and would become the provisions in Schedule 3 to the Companies Bill ("CB");</p> <p>(b) the Administration should ensure that its consultation would be highly transparent and covering a wide range of stakeholders in the business sector; and</p> <p>(c) the consultations to be conducted by the Administration and HKICPA could be undertaken in parallel</p>	<p>The Administration to take action as in paragraph 2(a) of the minutes</p>
003154-005241	<p>Administration Senior Assistant Legal Adviser 3 ("SALA3") Mr Jeffrey LAM Administration Chairman Mr WONG Ting-kwong Mr Andrew LEUNG</p>	<p><u>Clause 377 -- Subsidiary undertakings to be included in annual consolidated financial statements</u> <u>Division 2 of Part 9 (Reporting Exemption) (Clauses 358 to 362)</u> <u>Schedule 3 -- Specified Qualifying Conditions for Sections 359 to 362</u></p> <p>Discussion on the setting of "accounting standards"</p>	
005242-005335	<p>Administration</p>	<p><u>Clause 378 -- Notes to financial statements to contain information on directors' emoluments etc.</u> <u>Clause 379 -- Statement of financial position to be approved and signed</u></p> <p>Briefing on the above clauses</p>	

Time marker	Speaker	Subject(s)	Action required
005336-010131	Administration Mr Andrew LEUNG Chairman SALA3	<p><u>Clause 380 -- Directors must prepare directors' report</u></p> <p>Mr Andrew LEUNG's enquiry about the regulation governing the information required to be included in the directors' reports in clause 380(1)</p> <p>The Administration's advice that the regulation would be subsidiary legislation subject to the negative vetting procedure of LegCo</p> <p>Request for the Administration to prepare a summary of subsidiary legislation to be made under CB to facilitate members' understanding on the matters to be covered by the subsidiary legislation</p>	The Administration to take action as in paragraph 2(b) of the minutes
010132-010943	Administration Mr Andrew LEUNG	<p><u>Schedule 5 -- Contents of Directors' Report : Business Review</u></p> <p><u>Clause 381 -- Contents of directors' report: general</u></p> <p><u>Clause 382 -- Directors' report to be approved and signed</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the requirements under Schedule 5</p>	
010944-011523	Administration	Briefing on the Administration's response to deputations' views on clauses 375-382 (LC Paper No. CB(1)339/11-12(01))	
011524-012319	Administration Mr Andrew LEUNG	<p><u>Clause 383 -- Interpretation</u></p> <p><u>Clause 384 -- Eligibility for appointment</u></p> <p><u>Clause 385 -- Auditor must be appointed for each financial year</u></p> <p><u>Clause 386 -- Appointment of first auditor by directors</u></p> <p>Briefing on the above clauses</p> <p>Discussion on the criminal liability of a</p>	

Time marker	Speaker	Subject(s)	Action required
		director/company for appointing an unqualified auditor	
012320-012825	Administration	<u>Clause 387 -- Appointment of auditor by company members</u> <u>Clause 388 -- Appointment to fill casual vacancy</u> <u>Clause 389 -- Appointment of auditor by Court</u> <u>Clause 390 -- Effect of appointing a firm as auditor</u> <u>Clause 391 -- Special notice required for resolution for appointing auditor in some cases</u> <u>Clause 392 -- Copies of written resolution for appointment must be sent to new and old auditors</u> <u>Clause 393 -- Terms of office of auditor</u> <u>Clause 394 -- Person deemed to be reappointed as auditor</u> <u>Clause 395 -- Auditor's remuneration</u> Briefing on the above clauses	
012826-013638	Administration Mr Andrew LEUNG SALA3 Chairman	<u>Clause 396 -- Auditor's duty to report</u> The Administration's briefing on the clause and its response to deputations' views on the clause (LC Paper No. CB(1)339/11-12(01)) Discussion on whether the heading of the provision duly reflected its content Request for the Administration to consider revising the heading	The Administration to take action as in paragraph 2(c) of the minutes
013639-014120	Administration	<u>Clause 397 -- Auditor's opinion on financial statements, directors' report, etc.</u> <u>Clause 398 -- Auditor's opinion on other matters</u> Briefing on the above clauses	
014121-020602	Administration Chairman	<u>Clause 399 -- Offences relating to contents of auditor's report</u>	

Time marker	Speaker	Subject(s)	Action required
	<p>Mr Andrew LEUNG Mr Ronny TONG</p>	<p>The Administration's briefing on the clause and its response to deputations' views on the clause (LC Paper No. CB(1)339/11-12(01))</p> <p>The Administration's advice that HKICPA had expressed grave concern on the clause and the Institute would make a further submission on its views Mr Andrew LEUNG's enquiry on the penalty for offences under the clause</p> <p>The Chairman's concern on whether the scope of "the persons" in clause 399(2) was too wide, i.e. covering every employee and agent of the auditor who was eligible for appointment as auditor of the company</p> <p>The Chairman's views that the scope of clause 399(2) should be narrowed and should exclude junior employees of the auditing firm, and only the auditor and relevant persons who signed the auditor's report should be liable for offences under the clause</p> <p>Mr Ronny TONG's concern on the target of prosecution and whether persons who were not partners or employees of the firm when the auditor's report was prepared would be held liable where the "auditor" who prepared the auditor's report was a firm</p> <p>Mr Andrew LEUNG's view that the prosecution threshold for "responsible person" under CB was lower than that for auditors under clause 399</p> <p>Request for the Administration to provide a written response to address members' concerns</p>	<p>The Administration to take action as in paragraph 2(d) of the minutes</p>

Break (020603- 022306)

Clause-by-clause examination on the Bill
Part 9 of the Bill (LC Paper No. CB(1)331/11-12(01))

Time marker	Speaker	Subject(s)	Action required
022307-023106	Administration	<p><u>Clause 400 -- Auditor's reports to be signed</u> <u>Clause 401 -- Qualified privileges</u> <u>Clause 402 -- Rights in relation to general meeting</u> <u>Clause 403 -- Rights in relation to information</u> <u>Clause 404 -- Offences relating to section 403</u> <u>Clause 405 -- Auditor may provide information to incoming auditor without contravening duties</u></p> <p>Briefing on the above clauses and the Administration's response to deputations' views on the above clauses (LC Paper No. CB(1)339/11-12(01))</p>	
023107-025110	Administration Mr Andrew LEUNG SALA3 Chairman Mr WONG Ting-kwong	<p><u>Clause 406 -- Avoidance of provisions protecting auditor from liability</u></p> <p>Discussion on whether it was necessary to state expressly in clause 406(4) that a company was not prevented from taking out and keeping in force insurance for an auditor of the company</p> <p>Request for the Administration to provide background information on clause 406(4) and review the need to retain the clause</p>	The Administration to take action as in paragraph 2(e) of the minutes
025111-025211	Administration	<p><u>Clause 407 -- When appointment is terminated</u> <u>Clause 408 -- Resignation of auditor</u> Briefing on the above clauses</p>	
025212-025359	Administration Chairman	<p><u>Clause 409 -- Cessation of office</u></p> <p>The Chairman's suggestion that a period should be set out for the auditor to notify the company of his cessation of office</p> <p>Request for the Administration to consider the above suggestion</p>	The Administration to take action as in paragraph 2(f) of the minutes
025400-025832	Administration	<p><u>Clause 410 -- Company may remove auditor</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 411 -- Removed auditor not deprived of compensation, damages, etc.</u> <u>Clause 412 -- Resigning auditor may requisition meeting</u> <u>Clause 413 -- Cessation statement in relation to, and attendance at, general meeting</u> <u>Clause 414 -- Cessation statement in relation to written resolution</u></p> <p>Briefing on the above clauses</p>	
025833-025954	Chairman Administration	<p><u>Clause 413 -- Cessation statement in relation to, and attendance at, general meeting</u></p> <p>The Chairman's view that the drafting of clause 413(5) should be improved</p> <p>Request for the Administration to consider the above suggestion</p>	The Administration to take action as in paragraph 2(g) of the minutes
025955-030600	Administration Mr Andrew LEUNG	<p><u>Clause 415 -- Duty of resigning auditor to give statement</u> <u>Clause 416 -- Duty of auditor who retires or is removed to give statement</u> <u>Clause 417 -- Company's and aggrieved person's responses to statement of circumstances</u> <u>Clause 418 -- Court may order statement of circumstances not to be sent</u> <u>Clause 419 -- Offences relating to section 418</u></p> <p>Briefing and discussion on the above clauses</p>	
030601-030833	Administration	<p><u>Clause 420 -- Directors must lay financial statements etc. before company in general meeting</u> <u>Clause 421 -- Company must send copies of financial statements etc. to members before general meeting</u></p> <p>Briefing on the above clauses</p>	
030834-031257	Chairman SALA3	<p><u>Clause 420 -- Directors must lay financial statements etc. before company in general</u></p>	

Time marker	Speaker	Subject(s)	Action required
	Administration	<p><u>meeting</u></p> <p>Discussion on the concern that a director appointed at the end of the period specified in clause 422 might be liable for other directors' failure to lay a financial statement before the company in the annual general meeting</p> <p>Request for the Administration to provide a written response to address the concern</p>	<p>The Administration to take action as in paragraph 2(h) of the minutes</p>
031258-031557	Administration	<p><u>Clause 422 -- Period for laying and publishing financial statements etc.</u></p> <p><u>Clause 423 -- Exception to section 421</u></p> <p><u>Clause 424 -- Company must send to non-voting members other documents</u></p> <p><u>Clause 425 -- Offences relating to section 421</u></p> <p>Briefing on the above clauses</p>	
031558-031757	Administration Chairman	<p><u>Clause 426 -- Company must send copies of financial statements etc. to members and others on demand</u></p> <p>The Administration's briefing on the clause</p> <p>Request for the Administration to consider providing a defence for a company under the clause, and to provide justifications for setting the maximum fine for an offence under this clause at level 5 and imposing a daily default fine of \$1,000</p>	<p>The Administration to take action as in paragraph 2(i) of the minutes</p>
031758-032320	Administration Chairman	<p><u>Clause 427 -- Requirement in connection with publication of financial statements etc.</u></p> <p><u>Clause 428 -- Interpretation</u></p> <p><u>Clause 429 -- Application of Division</u></p> <p><u>Clause 430 -- Directors may prepare financial report in summary form</u></p> <p><u>Clause 431 -- Summary financial report to be approved and signed</u></p> <p>Briefing on the above clauses</p> <p>Discussion on penalties for offences</p>	

Time marker	Speaker	Subject(s)	Action required
		relating to preparation of financial reports	
032321-032615	Administration	<p><u>Clause 432 -- Company may send copy of summary financial report to member</u></p> <p><u>Clause 433 -- Company may seek member's intent on receiving summary financial report</u></p> <p><u>Clause 434 -- Notice of revocation and notice of cessation of statutory election</u></p> <p>Briefing on the above clauses</p>	
032616-033740	Administration Mr Andrew LEUNG Chairman Mr WONG Ting-kwong	<p><u>Clause 435 -- Company must comply with member's request in notice of intent etc.</u></p> <p><u>Clause 436 -- Additional copy of reports etc. to be sent by company</u></p> <p>Discussion on the above clauses</p> <p>Members' concern about whether the periods set under clause 436(3) for a company to provide a copy of the reporting documents for a financial year upon a person's request were adequate for compliance by the company</p> <p>Request for the Administration to review the above timeframes</p>	The Administration to take action as in paragraph 2(j) of the minutes
033741-034337	Administration Mr Andrew LEUNG Mr WONG Ting-kwong Ms Audrey EU Chairman	<p><u>Clause 437 -- Company must not send summary financial report under some circumstances</u></p> <p>Discussion on the scenario where a company's articles prohibited the company from sending a copy of the summary financial report instead of a copy of the reporting documents for the financial year to a member</p> <p>Request for the Administration to improve the drafting of clause 437(1) to distinguish the case of a strict prohibition to send a copy of the summary financial report from a prohibition to send a copy of the summary financial report instead of a copy of the reporting documents</p>	The Administration to take action as in paragraph 2(k) of the minutes

Time marker	Speaker	Subject(s)	Action required
034338-034520	Administration	<p><u>Clause 438 -- Exemption applicable to dormant company</u> <u>Clause 439 -- Liability for untrue or misleading statement in reports</u></p> <p>Briefing on the above clauses</p>	
034521-035900	Administration Mr Andrew LEUNG Chairman Mr Ronny TONG SALA3	<p><u>Clause 440 -- Voluntary revision of financial statements etc.</u></p> <p>Discussion on the scenarios where the directors might cause a financial statement to be revised, the scope of the revision, and the role of the auditor on the revision of a financial statement initiated by the directors</p> <p>Request for the Administration to improve the drafting of the clause to reflect the role of the auditor on the revision of a financial statement initiated by the directors</p>	The Administration to take action as in paragraph 2(1) of the minutes
035901-040056	Administration	<p><u>Clause 441 -- Financial Secretary may make regulation regarding revision of financial statements etc.</u> <u>Clause 442 -- Financial Secretary may make regulation regarding disclosures of certain information</u></p> <p>Briefing on the above clauses</p>	
040057-040406	Administration Deputy Chairman	<p><u>Clause 443 -- Financial Secretary may make other regulations</u> <u>Schedule 10</u> (Transitional and Saving Arrangements for Part 9) <i>Sections 73-81</i></p> <p>Enquiry on the regulations to be made by the Financial Secretary under clause 443</p> <p>The Administration's reply that it would provide a paper on subsidiary legislation to be made under CB and that they were subject to the negative vetting procedure of LegCo</p>	

Time marker	Speaker	Subject(s)	Action required
040407-040442	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
25 September 2012