

立法會
Legislative Council

LC Paper No. CB(1)2651/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twenty-second meeting held on
Friday, 2 December 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)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
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 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

Member absent : Dr Hon Philip WONG Yu-hong, GBS

**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

Ms Kitty TSUI
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

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)404/11-12(01) -- Comparison Table for Part 10 -- Directors and Companies Secretaries
- LC Paper No. CB(1)461/11-12(01) -- Comparison Table for Part 11 -- Fair Dealing by Directors
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 10, Part 11 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 -- 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)2280/10-11(01) -- Administration's paper on Part 10 and Part 11 of the Companies Bill
- LC Paper No. CB(1)2577/10-11(01) -- Administration's response to issues raised by members at the meetings on 3 and 10 June 2011 in relation to Part 10 and Part 11
- LC Papers No. -- Submissions on preparation of simplified financial and directors' reports
- CB(1)2928/10-11(01), (02), (03), (04), (05), (06), (07), (08), (09), (10), (11), (12), (13), (14) and (15)
- LC Paper No. CB(1)330/11-12(01) -- Views on preparation of

Action

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 --

Clause 449 -- Direction requiring company to appoint director

Clause 467 -- Direction requiring company to appoint company secretary

- (a) to consider setting out the time limit in these two clauses for a company to comply with the Registrar's direction to appoint a director/company secretary;
- (b) to consider amending the English and Chinese text of clause 449(4);

Clause 452 -- Validity of acts of director

- (c) to provide information about the practice in other common law jurisdictions in handling the validity of acts of an unqualified director;
- (d) to review clause 452, taking into consideration how it would interact with clauses 112 (transaction or act binds company despite limitation in articles etc.) and 114 (section 112 not to apply to certain cases) and relevant provisions in comparable jurisdictions;

Clause 453 -- Resolution to remove director

Clause 454 -- Director's right to protest against removal

- (e) to consider adding provisions about the consequences of non-compliance with these two clauses;
- (f) to clarify what constituted an "abuse" under clause 454(5);
- (g) to consider aligning the wording in clause 454(5) with other provisions on "abuse" (e.g. clauses 306(8) and 633(7));

Action

Clause 455 -- Resignation of director

Clause 468 -- Resignation of company secretary

- (h) to consider the suggestion that if there were requirements under the articles of a company for the serving of notice of resignation of a director/company secretary, such requirements should be followed;

Clause 456 -- Duty to exercise reasonable care, skill and diligence

- (i) to provide information to clarify the effect of clause 456(4), including whether the common law rules and equitable principles in relation to directors' fiduciary duty would be replaced by the clause;
- (j) to give information about the standards adopted in precedent court cases for directors' duty of care, skill and diligence;
- (k) to clarify whether acts taken place before the commencement date of the enacted Companies Ordinance would continue to be governed by the existing common law rules;

Clause 464 -- Ratification of conduct by director involving negligence, etc.

- (l) to change "past director" in clause 464(5)(b) to "former director" for the sake of consistency;
- (m) to provide information clarifying that the inclusion of breach of trust in clause 464(1) would not change the current law;
- (n) to give examples and precedent court cases to show that clauses 464(1) and 464(7) were not in conflict;

Schedule 10 -- section 83 -- Requirement to have at least one director who is natural person

- (o) to improve the drafting of section 83(4) so as to clarify the meaning of "the company" therein;

Action

Clause 477 -- Connected Entity

- (p) to consider revising the formulation of "a couple in an enduring family relationship" in clause 477(1)(b) with reference to the definition of "cohabitation relationship" in the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189); and
- (q) to consider including minor adopted children in clause 477(3)(b).

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 9 December 2011 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 12:39 pm.

Council Business Division 1
Legislative Council Secretariat
27 September 2012

Bills Committee on Companies Bill

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

Time marker	Speaker	Subject(s)	Action required
000711-000928	Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 10 of the Bill (LC Paper No. CB(1)404/11-12(01))</u>			
000929-001358	Administration Mr Albert HO Chairman	<u>Clause 444 -- Public company and company limited by guarantee required to have at least 2 directors</u> <u>Clause 445 -- Private company required to have at least one director</u> <u>Clause 446 -- Nomination of reserve director of private company</u> <u>Clause 447 -- Restriction on body corporate being director</u> The Administration's briefing on the above clauses Discussion on the requirement under clause 446 for a private company to deliver a notice to the Registrar of Companies ("the Registrar") when the nomination of a person as a reserve director of the company ceased to have effect Discussion on the consequence of contravening clause 447	
001359-001752	Administration Chairman Mr Andrew LEUNG	<u>Clause 448 -- Requirement to have at least one director who is natural person</u> Discussion on the relevant requirements in other common law jurisdictions The Administration's briefing on its response to views of deputations on clause 448 (LC Paper No. CB(1)339/11-12)	

Time marker	Speaker	Subject(s)	Action required
001753-002317	Administration Assistant Legal Adviser 2 ("ALA2") Mr Andrew LEUNG Chairman	<p><u>Clause 449 -- Direction requiring company to appoint director</u></p> <p>Members' suggestion on setting out the time limit in clause 449 for a company to comply with the Registrar's direction to appoint a director according to clause 444(2), 445(1) or 448(2)</p> <p>ALA2's remarks that there was inconsistency in the drafting of clauses 449(3) and 449(4) and his suggestion that the Administration should consider amending the English and Chinese text of clause 449(4)</p> <p>Request for the Administration to consider the above suggestions</p>	The Administration to take action as in paragraphs 2(a) and 2(b) of the minutes
002318-002715	Administration Mr Andrew LEUNG Mr Albert HO Chairman	<p><u>Clause 450 -- Minimum age for appointment as director</u></p> <p><u>Clause 451 -- Appointment of directors to be voted on individually</u></p> <p>The Administration's briefing on the above clauses</p> <p>Members seeking clarification on the provisions</p>	
002716-011147	Administration Mr Ronny TONG Ms Miriam LAU Chairman ALA 2 Senior Assistant Legal Adviser 3 ("SALA3") Mr Albert HO Mr Andrew LEUNG	<p><u>Clause 452 -- Validity of acts of director</u></p> <p>Discussion on the clause</p> <p>Members' concern about the contradiction between the voidance of the director's status and the validity of his/her acts, and their views that the validity of the unqualified director's acts should be confined to routine activities of the company only and should not apply to major transactions and changes</p> <p>Request for the Administration to --</p> <p>(a) provide information about the practice in</p>	The Administration to take action as in

Time marker	Speaker	Subject(s)	Action required
		<p>other common law jurisdictions in handling the validity of acts of an unqualified director; and</p> <p>(b) review clause 452, taking into consideration how it would interact with clauses 112 (transaction or act binds company despite limitation in articles etc.) and 114 (section 112 not to apply to certain cases) and relevant provisions in comparable jurisdictions</p>	<p>paragraphs 2(c) and 2(d) of the minutes</p>
011148-011353	Administration	<p>Briefing on the Administration's response to views of deputations on general issues related to Part 10 of the Companies Bill ("CB") (LC Paper No. CB(1)339/11-12(01))</p>	
011354-012647	<p>Administration Chairman Mr Ronny TONG Mr Albert HO ALA2</p>	<p><u>Clause 453 -- Resolution to remove director</u> <u>Clause 454 -- Director's right to protest against removal</u></p> <p>Discussion on the above clauses</p> <p>Members' concerns that --</p> <p>(a) there were no provisions on the consequences of non-compliance with the requirements under clauses 453 and 454;</p> <p>(b) it was not clear whether the removal of the director would become invalid if the above requirements were not complied with; and</p> <p>(c) on clause 454(6), it was not fair that the Court might order the company's costs on an application under clause 454(5) to be paid by a director who was not a party to the application</p> <p>ALA2's view that the meaning of "being abused" in clause 454(5) should be clarified and there should be consistency in the wording of provisions on abuse of court procedures</p> <p>Request for the Administration to --</p> <p>(a) consider adding provisions about the</p>	<p>The Administration to take action as in</p>

Time marker	Speaker	Subject(s)	Action required
		<p>consequences of non-compliance with clauses 453 and 454;</p> <p>(b) clarify what constituted an "abuse" under clause 454(5); and</p> <p>(c) consider aligning the wording in clause 454(5) with other provisions on "abuse" (e.g. clauses 306(8) and 633(7))</p>	<p>paragraphs 2(e) to 2(g) of the minutes</p>
<p>012648-014109</p>	<p>Administration ALA2 Mr Ronny TONG Chairman SALA 3 Mr Albert HO Mr Andrew LEUNG</p>	<p><u>Clause 455 -- Resignation of director</u></p> <p>Discussion on issues related to the resignation of a director</p> <p>Request for the Administration to consider the suggestion that if there were requirements under the articles of a company for the serving of notice of resignation of a director, the director should follow such requirements</p>	<p>The Administration to take action as in paragraph 2(h) of the minutes</p>
<p>014110-021549</p>	<p>Administration Mr Jeffrey LAM Mr Ronny TONG Mr Andrew LEUNG Chairman SALA3</p>	<p><u>Clause 456 -- Duty to exercise reasonable care, skill and diligence</u></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>Discussion on the standard of care, skill and diligence for directors, and concern about whether the adoption of the subjective standard of care, skill and diligence would raise the current standard of director's duty</p> <p>Members' enquiries about the development in other comparable jurisdictions in the adoption of the objective and subjective standards of care, skill and diligence expected of directors, and the appropriateness to replace the common law rules and equitable principles in relation to directors' duty of care, skill and diligence by clause 456(4)</p> <p>Request for the Administration to provide information about --</p> <p>(a) the effect of clause 456(4), including</p>	<p>The Administration to take action as in paragraphs 2(i)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>whether the common law rules and equitable principles in relation to directors' fiduciary duty would be replaced by the clause; and</p> <p>(b) the standards adopted in precedent court cases for directors' duty of care, skill and diligence</p>	and 2(j) of the minutes
<i>Break (021550- 023356)</i>			
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 10 of the Bill ((LC Paper No. CB(1)404/11-12(01))</u></p>			
023357-023838	ALA 2 Administration Chairman	<p><u>Clause 456 -- Duty to exercise reasonable care, skill and diligence</u></p> <p>Discussion on section 170(4) of the United Kingdom Companies Act 2006, on which clause 456 was modelled, and the transitional arrangements regarding the requirement of directors' duties of care, skill and diligence</p> <p>Request for the Administration to provide information on whether acts taken place before the commencement date of enacted Companies Ordinance would continue to be governed by the existing common law rules</p>	The Administration to take action as in paragraph 2(k) of the minutes
023839-024508	Administration Mr Ronny TONG	<p><u>Clause 457 -- Civil consequences of breach of duty to exercise reasonable care, skill and diligence</u></p> <p><u>Clause 458 -- Interpretation and application</u></p> <p><u>Clause 459 -- Avoidance of provisions protecting director from liability</u></p> <p><u>Clause 460 -- Permitted indemnity provision</u></p> <p><u>Clause 461 -- Permitted indemnity provision to be disclosed in directors' report</u></p> <p><u>Clause 462 -- Place where copy of permitted indemnity provision must be kept available for inspection</u></p> <p>Mr Ronny TONG seeking clarification on clause 459</p>	
024509-025042	Administration ALA2	<p><u>Clause 463 -- Right of member to inspect and request copy</u></p> <p><u>Clause 464 -- Ratification of conduct by</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>director involving negligence, etc.</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views on clause 460 (LC Paper No. CB(1)339/11-12(01))</p> <p>Discussion on the above clauses</p> <p>ALA2's enquiry of the duration of the "prescribed period" in clause 463(3)</p> <p>The Administration's response that it would be determined with reference to the relevant requirement in the United Kingdom and be set out in the relevant subsidiary legislation under CB</p> <p>ALA2's suggestion that "past director" in clause 464(5)(b) be changed to "former director" for the sake of consistency</p>	<p>The Administration to take action as in paragraph 2(1) of the minutes</p>
025043-030328	<p>Mr Ronny TONG Administration SALA3 Ms Miriam LAU</p>	<p><u>Clause 464 -- Ratification of conduct by director involving negligence, etc.</u></p> <p>Members' enquiry on whether a director's breach of trust could be ratified</p> <p>Members' concern that the inclusion of breach of trust in clause 464(1) might change the current law on ratification of acts of directors</p> <p>Request for the Administration to provide information --</p> <p>(a) to clarify that the inclusion of breach of trust in clause 464(1) would not change the current law; and</p> <p>(b) to give examples and precedent court cases to show that clauses 464(1) and 464(7) were not in conflict</p>	<p>The Administration to take action as in paragraphs 2(m) and 2(n) of the minutes</p>
030329-030534	<p>Chairman Administration</p>	<p><u>Clause 460 -- Permitted indemnity provision</u></p> <p>The Chairman seeking clarification on the clause</p>	

Time marker	Speaker	Subject(s)	Action required
030535-031203	Administration Deputy Chairman	<p><u>Clause 465 -- Company required to have company secretary</u></p> <p><u>Clause 466 -- Circumstances under which director may not be company secretary</u></p> <p><u>Clause 467 -- Direction requiring company to appoint company secretary</u></p> <p><u>Clause 468 -- Resignation of company secretary</u></p> <p><u>Clause 469 -- Director vicariously liable for acts of alternate etc.</u></p> <p><u>Clause 470 -- Avoidance of acts done by person in dual capacity as director and company secretary</u></p> <p><u>Clause 471 -- Provisions as to undischarged bankrupt acting as director</u></p> <p><u>Clause 472 -- Minutes of directors' meetings</u></p> <p><u>Clause 473 -- Minutes as evidence</u></p> <p><u>Clause 474 -- Written record of decision of sole director of private company</u></p> <p>The Administration's briefing on the above clauses</p> <p>The Deputy Chairman's enquiry about members' access to the minutes of directors' meetings (clause 472)</p> <p>The Administration's remarks that it would consider --</p> <p>(a) setting out the time limit in clause 467 for a company to comply with the Registrar's direction to appoint a company secretary; and</p> <p>(b) specifying in clause 468 that, if there were requirements under the articles of a company for the serving of notice of resignation of a company secretary, such requirements should be followed</p>	<p>The Administration to take action as in paragraphs 2(a) and 2(h) of the minutes</p>
031204-031520	Administration ALA 2	<p><u>Schedule 10</u> (Transitional and Saving Arrangements for Part 10)</p> <p><i>Sections 82-88</i></p> <p>The Administration's briefing on the above clauses</p>	<p>The Administration to</p>

Time marker	Speaker	Subject(s)	Action required
		ALA2's suggestion that the drafting of section 83(4) be improved to clarify the meaning of "the company" therein	take action as in paragraph 2(o) of the minutes
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 11 of the Bill (LC Paper No. CB(1) 461/11-12(01))</u></p>			
031521-031559	Administration	<p><u>Clause 475 -- Interpretation</u> <u>Clause 476 -- Circumstances constituting contravention</u></p> <p>Briefing on the above clauses</p>	
031600-034645	<p>Administration Mr Ronny TONG Chairman Administration SALA3 Mr WONG Ting-kwong Ms Audrey EU ALA2</p>	<p><u>Clause 477 -- Connected entity</u> <u>Clause 478 -- Family member of director or former director</u> <u>Clause 479 -- Director or former director associated with, or controlling, body corporate</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on clause 477</p> <p>Members' concern that the formulation of "a couple in an enduring family relationship" in clause 477(1)(b) might not accurately reflect "cohabitation relationship"</p> <p>ALA2's enquiry about the definition of "pension scheme" in clause 477(1)(e) and his remarks that minor adopted children were not included in clause 477(3)(b), unlike other relevant clauses in the same Part</p> <p>Request for the Administration to consider --</p> <p>(a) revising the formulation of "a couple in an enduring family relationship" in clause 477(1)(b) with reference to the definition of "cohabitation relationship" in the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189); and</p> <p>(b) ALA2's views on clause 477(3)(b)</p>	<p>The Administration to take action as in paragraphs 2(p) and 2(q) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
034646-035816	Administration Chairman Ms Miriam LAU ALA2	<p><u>Clause 480 -- Company subject to more than one prohibition</u> <u>Clause 481 -- Application to transaction or arrangement despite its governing law</u> <u>Clause 482 -- Interpretation</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views (LC Paper No. CB(1)339/11-12(01))</p> <p>Discussion on the circumstances that a body corporate would not be regarded as a shadow director of any of its subsidiaries (clause 482(2))</p>	
035817-040319	Administration	<p><u>Clause 483 -- Quasi-loan</u> <u>Clause 484 -- Credit transaction</u> <u>Clause 485 -- Person for whom transaction or arrangement entered into</u> <u>Clause 486 -- Prescribed approval of members</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views on clause 485 (LC Paper No. CB(1)339/11-12(01))</p> <p>Discussion about the meaning of "accidental failure" in clause 486(3)</p>	
040320-040814	Administration	<p><u>Clause 487 -- Value of transaction or arrangement etc.</u> <u>Clause 488 -- Relevant transaction or arrangement</u> <u>Clause 489 -- Total exposure amount</u> <u>Clause 490 -- Preservation of effect of members' unanimous consent</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views on clause 488 (LC Paper No. CB(1)339/11-12(01))</p> <p>ALA2's views on the drafting of clauses 489(1)(a) and 489(1)(b)</p>	

Time marker	Speaker	Subject(s)	Action required
040815-040905	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
27 September 2012