

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2652/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/10/2

**Bills Committee on Companies Bill**

**Minutes of the twenty-third meeting held on  
Friday, 9 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  
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 James TO Kun-sun  
Hon Abraham SHEK Lai-him, SBS, JP

**Public officers attending** : **Agenda item I**  
Mr Darryl CHAN  
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

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)461/11-12(01) -- Comparison Table for Part 11 -- Fair Dealing by Directors
- LC Paper No. CB(3)412/10-11 -- The Bill (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)

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

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

Action

Subdivision 2 (Prohibitions) of Division 2 (Loan, Quasi-loan and Credit Transaction) of Part 11

- (a) to provide information on how the following loopholes could be plugged to protect the interest of minority shareholders --
- (i) a director might set up another company and make loans, quasi-loans, etc. in order to circumvent the prohibition;
  - (ii) the Companies Bill ("CB") prohibited a company from making loans, quasi-loans, etc. to a director of its holding company but there were no restrictions on making loans to a director of the company's subsidiary;
  - (iii) if a private company had only two directors, one of the directors might make loans, quasi-loans, etc. to the other without the approval of shareholders;
- (b) to provide information about the restrictions on the making of loans of listed companies under the Listing Rules of the Hong Kong Exchanges and Clearing Limited ("HKEx");

Clause 496 -- Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of total assets or called-up share capital

- (c) to review the use of the term "company's accounts" in clause 496;
- (d) to consider whether the limit of the value of the loan, quasi-loan, etc. should be set as a percentage of a company's total asset (following the relevant provisions in the United Kingdom Companies Act 2006 ("UKCA 2006")), an exact amount, or a percentage with a specified amount as the upper limit;

Clause 497 -- Exception for expenditure on company business

- (e) to review the drafting of the Chinese text of clause 497;

Clause 498 -- Exception for expenditure on defending proceedings etc.  
Clause 499 -- Exception for expenditure in connection with investigation or regulatory action

- (f) to provide written response to the following concerns, including

Action

information about the relevant provisions in UKCA 2006, and to review clauses 498 and 499 in the light of these concerns --

- (i) what a company could do in case a director could not repay the funds to the company after the proceedings;
- (ii) whether a judgment would be regarded as given against the director if the judgment was given against the director in the Court of First Instance but the case was subsequently settled after an appeal had been lodged to the Court of Appeal;
- (iii) whether a director would be required to repay the funds if he was only convicted of some of the criminal charges against him;

Clause 500 -- Exception for home loan

Clause 501 -- Exception for leasing goods and land etc.

- (g) to consider whether the exceptions under clauses 500 and 501 should cover a director of the holding company of a company;

Clause 505 – Affirmation of contravening transaction or arrangement

- (h) to review the drafting of clause 505(5) with a view to improving the clarity;

Clause 507 -- Interpretation

- (i) to review whether the Chinese rendition of "takeover offer" should be "收購要約" or "收購邀約";

Clause 513 -- Person must not make payment for loss of office to director or former director in connection with transfer of company's undertaking or property

- (j) to review the use of "undertaking" (業務) in this clause and other provisions in CB with a view to avoiding confusion with "undertaking" (企業) as defined in clause 2(1);

Clause 514 -- Person must not make payment for loss of office to director or former director in connection with transfer of shares resulting from takeover offer

Action

Clause 515 -- Exception for payments in discharge of legal obligation etc.

- (k) to provide information about the relevant requirements under the Listing Rules of HKEx regarding the disclosure of remuneration of directors, including whether companies were required to disclose the compensation to individual directors for termination of directorship;

Clause 516 -- Exception for small payment

- (l) to review the necessity of specifying the maximum payment amount (\$20,000) in the clause;

Clause 518 -- Civil consequences of contravention of section 512

Clause 519 -- Civil consequences of contravention of section 513

Clause 520 -- Civil consequences of contravention of section 514

- (m) to provide a written response to members' concern about whether a time limit should be introduced under clauses 518 to 520 in respect of the payment to be made by a company (and be held by the recipient in trust for the company) on contravention of clauses 512 to 514;

Clause 529 -- Declaration to directors: procedures

- (n) to consider changing "effective date" to "date" in clauses 529(4)(a)(ii) and 529(4)(b)(ii), as the meaning of "effective" was not clear; and

Clause 535 -- Contract with sole member who is also director

- (o) to consider whether the time limit of seven days in section 162B(1) of the Companies Ordinance (Cap. 32) for the terms of the contract with the sole member to be set out in a written memorandum should be restated in clause 535.

Action

**II Any other business**

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 16 December 2011 at 9:00 am to meet with the Administration.

4. There being no other business, the meeting ended at 12:21 pm.

Council Business Division 1  
Legislative Council Secretariat  
27 September 2012

## Bills Committee on Companies Bill

**Proceedings of the twenty-third meeting  
on Friday, 9 December 2011, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000630-000843	Chairman	Opening remarks	
<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>			
000844-005829	Administration Mr Andrew LEUNG Chairman Mr Jeffrey LAM Mr Ronny TONG Assistant Legal Adviser 2 ("ALA2")	<p><u>Clause 491 -- Company must not make loan etc. to director</u></p> <p><u>Clause 492 -- Specified company must not make quasi-loan etc. to director</u></p> <p><u>Clause 493 -- Specified company must not make loan or quasi-loan etc. to connected entity</u></p> <p><u>Clause 494 -- Specified company must not enter into credit transaction etc. as creditor for director or connected entity</u></p> <p><u>Clause 495 -- Company must not take part in arrangement purporting to circumvent sections 491 to 494</u></p> <p>Briefing and discussion on the above clauses</p> <p>Members' concerns about the following loopholes --</p> <p>(a) a director might set up another company and make loans to it to circumvent the prohibition under the clause;</p> <p>(b) the Companies Bill ("CB") prohibited a company from making loans to a director of its holding company but there were no restrictions on making loans to a director of the company's subsidiary; and</p> <p>(c) if a private company had only two directors, one of the directors might make loans to the other without the approval of shareholders</p> <p>ALA2's remarks that the United Kingdom Companies Act 2006 ("UKCA 2006") covered a wider range of parties who were subject to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>restrictions on receiving loans from a company, whereas CB would only impose such restrictions on directors, directors of a company's holding company and entities connected with a company or a director</p> <p>The Administration's response that the relevant provisions in CB aimed to strike a balance between corporate governance and facilitation of business operation</p> <p>Request for the Administration to provide information on how the above loopholes could be plugged to protect the interest of minority shareholders, and to review the clauses to address members' concerns</p> <p>Members concerns about the exemption under clauses 491(3)(a), 492(3)(a), 493(3)(a) and 495(3)(a) for a holding company, subsidiary or body corporate (as the case may be) from the requirement for company members' approval in respect of a transaction to be entered into if the holding company, subsidiary or body corporate was incorporated outside Hong Kong</p> <p>The Administration's response that --</p> <p>(a) these provisions were modelled on UKCA 2006;</p> <p>(b) CB mainly governed companies incorporated in Hong Kong;</p> <p>(c) there would be practical difficulties in enforcing the provisions of CB against companies incorporated outside Hong Kong; and</p> <p>(d) the loans to be made by listed companies were subject to the Listing Rules of the Hong Kong Exchanges and Clearing Limited ("HKEx")</p> <p>Request for the Administration to provide information about the restrictions on the making of loans of listed companies under the Listing Rules</p>	<p>The Administration to take action as in paragraph 2(a) of the minutes</p> <p>The Administration to take action as in paragraph 2(b) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
005830-011038	Administration Mr Andrew LEUNG Chairman Senior Assistant Legal Adviser 3 ("SALA3") ALA 2	<p><u>Clause 496 -- Exception for loan, quasi-loan and credit transaction of value not exceeding 5% of total assets or called-up share capital</u></p> <p>Discussion on whether the limit of the value of the loan, quasi-loan, etc. should be set as a percentage of a company's total asset or as an exact amount</p> <p>ALA2 seeking clarification on the term "company's accounts"</p> <p>Request for the Administration to --</p> <p>(a) review the use of the term "company's accounts" in the clause; and</p> <p>(b) review whether the limit of the value of the loan, quasi-loan, etc. should be set as a percentage of a company's total asset (following the relevant provisions in UKCA 2006), an exact amount, or a percentage with a specified amount as the upper limit</p>	The Administration to take action as in paragraphs 2(c) and 2(d) of the minutes
<i>Break (011039- 011925)</i>			
<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>			
011926-012130	Administration Mr Andrew LEUNG	<p><u>Clause 497 -- Exception for expenditure on company business</u></p> <p>Request for the Administration to review the drafting of the Chinese text of the clause</p>	The Administration to take action as in paragraph 2(e) of the minutes
012131-013655	Administration Chairman Ms Audrey EU SALA3 Mr Andrew LEUNG ALA2	<p><u>Clause 498 -- Exception for expenditure on defending proceedings etc.</u>  <u>Clause 499 -- Exception for expenditure in connection with investigation or regulatory action</u></p> <p>Briefing and discussion on the above clauses</p> <p>ALA2's enquiry about the definition of "regulatory authority" in clause 499(1)(a)</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Members' concerns about --</p> <p>(a) what a company could do in case a director could not repay the funds to the company after the proceedings;</p> <p>(b) whether a judgment would be regarded as given against the director if it was given against the director in the Court of First Instance but the case was subsequently settled after an appeal had been lodged to the Court of Appeal; and</p> <p>(c) whether a director would be required to repay the funds if he was only convicted of some of the criminal charges against him</p> <p>Request for the Administration to provide written response to the above concerns, including information about the relevant provisions in UKCA 2006, and to review clauses 498 and 499 in the light of these concerns</p>	<p>The Administration to take action as in paragraph 2(f) of the minutes</p>
013656-014726	<p>Administration Mr Andrew LEUNG Chairman ALA2</p>	<p><u>Clause 500 -- Exception for home loan</u> <u>Clause 501 -- Exception for leasing goods and land etc.</u></p> <p>Briefing and discussion on the above clauses</p> <p>Members' suggestion that the Administration should consider whether the exceptions under these two clauses should cover a director of the holding company of a company</p>	<p>The Administration to take action as in paragraph 2(g) of the minutes</p>
014727-020220	<p>Administration SALA 3 Ms Audrey EU ALA2</p>	<p><u>Clause 502 -- Exception for transaction entered into in ordinary course of business</u> <u>Clause 503 -- Exception for intra-group transaction</u> <u>Clause 504 -- Civil consequences of contravention</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views on clause 504 (LC Paper No. CB(1)339/11-12(01))</p>	

Time marker	Speaker	Subject(s)	Action required
		Discussion on the above clauses	
020221-022046	Administration Chairman Mr Andrew LEUNG Ms Audrey EU	<p><u>Clause 505 -- Affirmation of contravening transaction or arrangement</u></p> <p><u>Clause 506 -- Provisions supplementary to section 505</u></p> <p>Briefing and discussion on the above clauses</p> <p>Members' concern that the drafting of clause 505(5) would imply that a transaction or arrangement could be affirmed even after a reasonable period had lapsed</p> <p>Request for the Administration to review clause 505(5) to improve the drafting</p>	The Administration to take action as in paragraph 2(h) of the minutes
021747-022039	Chairman Administration	<p>The Chairman's enquiry on the progress of the consultations of the Administration and the Hong Kong Institute of Certified Public Accountants on the qualifying criteria for private companies to prepare simplified financial and directors' reports</p> <p>The Administration's response that --</p> <p>(a) both consultations had started on 6 December 2011 and would close on 16 January 2012; and</p> <p>(b) the Administration would brief the Bills Committee on the results of the consultations</p>	
022040-022345	Administration Chairman	<p><u>Clause 507 -- Interpretation</u></p> <p>The Administration's briefing on the clause</p> <p>Request for the Administration to review whether the Chinese rendition of "takeover offer" should be "收購要約" or "收購邀約"</p>	The Administration to take action as in paragraph 2(i) of the minutes
022346-024109	Administration Mr Andrew LEUNG Chairman	<p><u>Clause 508 -- Payment for loss of office</u></p> <p><u>Clause 509 -- Prescribed approval of members or affected members</u></p>	

Time marker	Speaker	Subject(s)	Action required
	Mr WONG Ting-kwong ALA 2	<p><u>Clause 510 -- Preservation of effect of members' or affected members' unanimous consent</u></p> <p><u>Clause 511 -- This Division does not affect operation of other Ordinance or law</u></p> <p><u>Clause 512 -- Company must not make payment for loss of office to director or former director</u></p> <p>Briefing and discussion on the above clauses</p>	
024110-024554	Administration ALA 2	<p><u>Clause 513 -- Person must not make payment for loss of office to director or former director in connection with transfer of company's undertaking or property</u></p> <p>The Administration's briefing on the clause</p> <p>Request for the Administration to review the use of "undertaking" (業務) in this clause and other provisions in CB with a view to avoiding confusion with "undertaking" (企業) as defined in clause 2(1)</p>	The Administration to take action as in paragraph 2(j) of the minutes
024555-030700	Administration Mr Andrew LEUNG Mr WONG Ting-kwong Mr Albert HO Chairman SALA3	<p><u>Clause 514 -- Person must not make payment for loss of office to director or former director in connection with transfer of shares resulting from takeover offer</u></p> <p><u>Clause 515 -- Exception for payments in discharge of legal obligation etc.</u></p> <p>Briefing and discussion on the above clauses and compensation to a director for loss of office</p> <p>Request for the Administration to provide information about the relevant requirements under the Listing Rules of HKEx regarding the disclosure of remuneration of directors, including whether companies were required to disclose the compensation to individual directors for termination of directorship</p>	The Administration to take action as in paragraph 2(k) of the minutes
030701-031555	Administration Chairman Mr Andrew LEUNG Dr Philip WONG	<p><u>Clause 516 -- Exception for small payment</u></p> <p>Briefing and discussion on the clause</p>	

Time marker	Speaker	Subject(s)	Action required
	Ms Audrey EU	<p>Members' concern on the necessity to specify the maximum payment amount (\$20,000) in the clause, taking into account that the amount could be set out in a company's articles</p> <p>Request for the Administration to review whether it was necessary to specify the maximum amount in the clause</p>	The Administration to take action as in paragraph 2(l) of the minutes
031556-032039	Administration	<p><u>Clause 517 -- Interpretation</u>  <u>Clause 518 -- Civil consequences of contravention of section 512</u>  <u>Clause 519 -- Civil consequences of contravention of section 513</u>  <u>Clause 520 -- Civil consequences of contravention of section 514</u>  <u>Clause 521 -- Interpretation</u>  <u>Clause 522 -- Service contract</u>  <u>Clause 523 -- Prescribed approval of members</u>  <u>Clause 524 -- Preservation of effect of members' unanimous consent</u>  <u>Clause 525 -- Company must not agree to director's long-term employment</u>  <u>Clause 526 -- Civil consequences of contravention of section 525</u></p> <p>Briefing on the above clauses</p>	
032040-032247	Administration ALA 2	<p><u>Clause 527 -- Director must declare material interests</u></p> <p>ALA2's enquiry about the more relaxed requirements under the clause as compared with the relevant provisions in UKCA 2006</p>	
032248-032932	Ms Audrey EU Administration Chairman Mr Albert HO Dr Philip WONG Mr Andrew LEUNG	<p><u>Clause 518 -- Civil consequences of contravention of section 512</u>  <u>Clause 519 -- Civil consequences of contravention of section 513</u>  <u>Clause 520 -- Civil consequences of contravention of section 514</u></p> <p>Members' concern about whether a time limit should be introduced under these clauses in respect of the payment to be made by a company (and to be held by the recipient in trust for the company) on contravention of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>clauses 512 to 514</p> <p>Request for the Administration to provide a written response to the above concern</p>	<p>The Administration to take action as in paragraph 2(m) of the minutes</p>
032933-033916	Administration ALA 2 SALA 3	<p><u>Clause 528 -- Declaration to directors: timing</u> <u>Clause 529 -- Declaration to directors: procedures</u></p> <p>The Administration's briefing on the above clauses</p> <p>ALA2 and SALA3 seeking clarification on clause 529</p> <p>Request for the Administration to consider changing "effective date" to "date" in clauses 529(4)(a)(ii) and 529(4)(b)(ii), as the meaning of "effective" was not clear</p>	<p>The Administration to take action as in paragraph 2(n) of the minutes</p>
033917-034444	Administration Chairman Ms Miriam LAU	<p><u>Clause 530 -- Declaration to directors in case of company with sole director</u> <u>Clause 531 -- Application of Division to shadow director</u> <u>Clause 532 -- Offence</u> <u>Clause 533 -- Disclosure of management contract</u> <u>Clause 534 -- Right of member to inspect and request copy</u></p> <p>Briefing and discussion on the above clauses</p>	
034445-034742	Administration ALA 2 Chairman Ms Audrey EU	<p><u>Clause 535 -- Contract with sole member who is also director</u></p> <p>Discussion on the time limit for the terms of the contract with the sole member to be set out in a written memorandum</p> <p>Request for the Administration to consider whether the time limit of seven days in section 162B(1) of the Companies Ordinance (Cap. 32) should be restated in this clause</p>	<p>The Administration To take action as in paragraph 2(o) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
034743-035044	Administration Chairman	<u>Clause 536 -- Financial Secretary may amend certain sums or percentage figures</u>  <u>Schedule 10</u> (Transitional and Saving Arrangements for Part 11) <i>Sections 89 to 91</i>  The Administration's briefing on the above clauses  The Chairman seeking clarification	
035045-035100	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
27 September 2012