

立法會
Legislative Council

LC Paper No. CB(1)2653/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twenty-fifth meeting held on
Friday, 6 January 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
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 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** : Hon Starry LEE Wai-king, JP (Deputy Chairman)
Hon James TO Kun-sun
- 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)

Mr Maurice LOO
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Ms Rita HO
Registry Solicitor
Companies Registry

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

Ms Marianna YU
Deputy Registry Manager (Registration)
Companies Registry

Mr CHUNG Wai-tim
Solicitor (Company Law Reform)
Companies Registry

Miss Selina LAU
Senior Government Counsel
Department of Justice

Ms Natalie WONG
Senior Government Counsel
Department of Justice

Mr Stefan LO
Senior Government Counsel (Acting)
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)530/11-12(01) -- Comparison Table for Part 12 -- Company Administration and Procedure
- LC Paper No. CB(1)744/11-12(03) -- Administration's response to issues raised by members at the meetings on 4, 11 and 18 November 2011 in relation to Parts 3, 4 and 7
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 3, Part 4, Part 7, Part 12 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

Action

- (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(03) -- Administration's paper on Part 2 and Part 12 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)

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

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

Clauses 608 -- (Records of resolutions and meetings, etc.) and 617 (Register of members)

- (a) to consider whether the period for keeping records of resolutions and meetings, etc. in clause 608 and the period for keeping a former member's entry on the register of members in clause 617 should be shortened;

Clauses 609 -- (Place where records must be kept available for inspection), 618 (Place where register must be kept available for inspection), 632 (Register of directors) and 639 (Register of company secretaries)

- (b) to consider revising the above clauses to --

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- (i) allow inspection of records to take place at a place other than the place(s) at which the records were kept;
- (ii) allow a company to notify the Registrar of Companies ("the Registrar") of the inspection place, instead of the storage place; and
- (iii) introduce a defence under these clauses so that a company would not be liable for failing to provide records for inspection due to reasons that were out of the company's control;

Clause 619 -- Statement that company has only one member

- (c) to consider specifying the time limit for a company to update its register of members when there were changes;

Clause 620 -- Index of members

- (d) to review whether the period of 7 days (after the date on which any alteration was made in a company's register of members) for a company to make alteration in the index of names of members should be reverted to 14 days as in the Companies Ordinance ("CO");

Clause 626 -- (Register to be proof in the absence of contrary evidence)

- (e) to provide information about case law on section 102(2) of CO (the 30-year time limit for adducing evidence to challenge the accuracy of an entry in the register);
- (f) to consider retaining the 30-year time limit (as in CO) for adducing evidence to challenge the accuracy of an entry in the register, or leaving the matter to the court;

Clause 646 -- (Form of company records)

- (g) to review the wording of clause 646(4) to ensure that inspection by electronic means would be allowed;

Section 108 -- (Supplementary provisions relating to particulars to be

Action

registered) of Schedule 10 (Transitional and Saving Provisions)

- (h) to review the reference to "shadow director" in section 108 of Schedule 10 to avoid confusion;

Section 110 -- (Particulars to be registered) of Schedule 10 (Transitional and Saving Provisions)

- (i) to review the transitional arrangement for the registration of a company secretary's correspondence address, taking into account that the company secretary could be a service agency but not an employee of the company;

Clause 33 -- Registrar may refuse to accept or register document

- (j) to re-consider providing in the Bill for a time limit for the Registrar's reply to a company as to whether a document was acceptable for registration; and

Clause 54 -- Disclosure under order of Court

- (k) to consider whether it would be a better arrangement for the Administrative Appeals Board, rather than the Court, to be empowered to hear appeals against the Registrar's refusal to disclose a protected address and to make an order for disclosure.

II Any other business

3. The Chairman advised that the next meeting of the Bills Committee had been tentatively scheduled for Friday, 13 January 2012, at 8:30 am to meet with the Administration and the Clerk would inform members of the confirmed schedule.

4. There being no other business, the meeting ended at 12:29 pm.

Council Business Division 1
Legislative Council Secretariat
27 September 2012

Bills Committee on Companies Bill

**Proceedings of the twenty-fifth meeting
on Friday, 6 January 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000416-000617	Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 12 of the Bill (LC Paper No. CB(1)530/11-12(01))</u>			
000618-000712	Administration	<u>Clause 607 -- Written record where company has only one member</u> Briefing on the clause	
000713-001947	Administration Mr Andrew LEUNG Chairman Mr Ronny TONG Dr Philip WONG Mr WONG Ting-kwong	<u>Clause 608 -- Records of resolutions and meetings, etc.</u> Concerns of Mr Andrew LEUNG, Dr Philip WONG and Mr WONG Ting-kwong that the required period (at least 20 years) under the clause for a company to keep the records of resolutions and meetings, etc. might be too long vis-à-vis relevant requirements of 10 years and 7 years in the United Kingdom and Australia respectively, and the 7-year requirement for company to keep accounting records in clause 373(2) Mr Ronny TONG seeking clarification on the types of records required to be kept and the penalties for contravention of the provisions Request for the Administration to consider shortening the required period (at least 20 years) for company to keep records of resolutions and meetings, etc.	The Administration to take action as in paragraph 2(a) of the minutes
001948-004020	Administration Senior Assistant Legal Adviser 3 ("SALA3")	<u>Clause 609 -- Place where records must be kept available for inspection</u>	

Time marker	Speaker	Subject(s)	Action required
	<p>Mr Andrew LEUNG Mr WONG Ting-kwong Dr Philip WONG Chairman</p>	<p>Members' views that --</p> <p>(a) as many companies in Hong Kong had to keep records in different warehouses, the records and registers of a company might not be available for inspection at the place where they were kept; and</p> <p>(b) a company might be unable to provide records for inspection due to reasons beyond its control, e.g. the records had been destroyed by fire</p> <p>Request for the Administration to revise clause 609 to --</p> <p>(a) allow inspection of records to take place at a place other than the place(s) at which the records were kept;</p> <p>(b) allow a company to notify the Registrar of Companies ("the Registrar") of the inspection place, instead of the storage place; and</p> <p>(c) introduce a defence under the clause so that a company would not be liable for failing to provide records for inspection due to reasons that were out of the company's control</p>	<p>The Administration to take action as in paragraph 2(b) of the minutes</p>
<p>004021-004522</p>	<p>Administration Chairman</p>	<p><u>Clause 610 -- Right to inspect and request copy</u> <u>Clause 611 -- Records as evidence of resolutions etc.</u> <u>Clause 612 -- Registration of and requirements relating to certain resolutions, etc.</u></p> <p>The Administration's briefing on the above clauses</p> <p>In response to the Chairman's enquiry, the Administration's confirmation that the time limit of 14 or 15 days set out in various clauses of the Companies Bill</p>	

Time marker	Speaker	Subject(s)	Action required
		("CB") (e.g. clause 612(2)) would all be revised to 15 days in the light of suggestion by the Bills Committee	
004523-004844	Administration	<u>Clause 613 -- Application to class meetings of companies with share capital</u> <u>Clause 614 -- Application to class meetings of companies without share capital</u> <u>Clause 615 -- Interpretation</u> <u>Clause 616 -- Interpretation</u> Briefing on the clauses	
004845-005104	Administration Mr WONG Ting-kwong	<u>Clause 617 -- Register of members</u> The Administration's briefing on the clause and its advice that consideration would be given to shorten the period of 20 years for keeping the register of members by the company in clause 617(5) Mr WONG Ting-kwong seeking clarification on the clause	The Administration to take action as in paragraph 2(a) of the minutes
005105-005205	Administration	<u>Clause 618 -- Place where register must be kept available for inspection</u> Briefing on the clause by the Administration, and its advice that the clause would be reviewed in the light of members' views expressed on clause 609	The Administration to take action as in paragraph 2(b) of the minutes
005206-005501	Administration Assistant Legal Adviser 2 ("ALA2")	<u>Clause 619 -- Statement that company has only one member</u> The Administration's briefing on the above clause ALA2's suggestion that there should be a specific time limit for a company to update its register of members when there were changes	The Administration to take action as in paragraph 2(c) of the minutes
005502-005936	Administration Mr Andrew LEUNG	<u>Clause 620 -- Index of members</u>	

Time marker	Speaker	Subject(s)	Action required
	Mr Ronny TONG Chairman	Mr Andrew LEUNG's view that the Administration should review the 7-day requirement for a company to alter the index of the names of members after any alteration in its register of members, and the requirement should be reverted to 14 days as in the Companies Ordinance ("CO")	The Administration to take action as in paragraph 2(d) of the minutes
005937-010210	Administration	<p><u>Clause 621 -- Right to inspect and request copy</u></p> <p>Briefing on the clause</p> <p>The Administration's advice that clause 621(8) would be deleted having regard to the views members expressed earlier on provisions of similar nature</p>	
010211-010448	Administration	<p><u>Clause 622 -- Consequences of contravening requirements as to register owing to other person's default</u></p> <p><u>Clause 623 -- Power to close register of members</u></p> <p><u>Clause 624 -- Power of Court to rectify register</u></p> <p><u>Clause 625 -- Trusts not to be entered in register</u></p> <p>Briefing on the above clauses</p>	
010449-012213	Administration Mr Ronny TONG Chairman SALA3 Mr Andrew LEUNG Mr WONG Ting-kwong	<p><u>Clause 626 -- Register to be proof in the absence of contrary evidence</u></p> <p>Discussion on the clause</p> <p>Mr Ronny TONG's concern that reduction in the time limit (from 30 years in CO to 20 years in CB) for adducing evidence to challenge the accuracy of an entry in the register might prejudice the rights of shareholders, and his request for information about case law on section 102(2) of CO (the time-limit for adducing evidence to challenge the accuracy of an entry in the register)</p> <p>Request for the Administration to provide the above information and to</p>	The Administration to

Time marker	Speaker	Subject(s)	Action required
		consider retaining the 30-year time limit or leaving the matter to the court	take action as in paragraphs 2(e) and 2(f) of the minutes
012214-012728	Administration	<u>Clause 627 -- Branch register of members</u> <u>Clause 628 -- Keeping of branch register</u> <u>Clause 629 -- Transactions in shares registered in branch register</u> <u>Clause 630 -- Discontinuance of branch register</u> <u>Clause 631 -- Provisions as to branch registers of non-Hong Kong companies kept in Hong Kong</u> Briefing on the above clauses	
012729-012923	Administration Mr Albert HO	<u>Clause 632 -- Register of directors</u> <u>Clause 633 -- Right to inspect and request copy</u> The Administration's briefing on the clauses and Mr Albert HO seeking clarification on clause 633	
012924-013253	Administration ALA2	<u>Clause 634 -- Particulars of directors to be registered</u> The Administration's briefing on the clause, and discussion on the interpretation of "residential address" in clause 634(4)	
013254-013502	Administration ALA2	<u>Clause 635 -- Protection of certain particulars from inspection</u> The Administration's briefing on the clause ALA2 seeking clarification on clause 635(2)	
013503-013654	Administration	<u>Clause 636 -- Duty to notify Registrar of appointment and change</u> <u>Clause 637 -- Duty of director to make disclosure</u> Briefing on the clauses	

Time marker	Speaker	Subject(s)	Action required
013655-014319	Administration	<p><u>Clause 638 -- Registrar to keep an index of directors</u></p> <p>The Administration's briefing on the clause</p> <p>Mr Albert HO's enquiry about the disclosure of a director's residential address and identity card number, and the Administration's response</p>	
014320-014458	Administration	<p><u>Clause 639 -- Register of company secretaries</u></p> <p><u>Clause 640 -- Right to inspect and request copy</u></p> <p><u>Clause 641 -- Particulars of company secretaries to be registered</u></p> <p><u>Clause 642 -- Protection of identification number from inspection</u></p> <p><u>Clause 643 -- Duty to notify Registrar of appointment and change</u></p> <p><u>Clause 644 -- Duty of company secretary to make disclosure</u></p> <p><u>Clause 645 -- Meaning of company records</u></p> <p>Briefing on the above clauses</p>	
014459-014856	Administration ALA2	<p><u>Clause 646 -- Form of company records</u></p> <p>The Administration's briefing on the clause</p> <p>ALA2's suggestion that the wording of clause 646(4) should be reviewed to ensure that inspection by electronic means would be allowed</p>	<p>The Administration to take action as in paragraph 2(g) of the minutes</p>
014857-015608	Administration	<p><u>Clause 647 -- Duty to take precautions against falsification</u></p> <p><u>Clause 648 -- Regulations about keeping and inspection of company records and provision of copies</u></p> <p><u>Clause 649 -- Registered office of company</u></p> <p><u>Clause 650 -- Requirement to disclose company name, etc.</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 651 -- Criminal consequences of failure to make required disclosures</u> <u>Clause 652 -- Civil consequence of failure to make required disclosures</u> <u>Clause 653 -- Requirement to deliver annual return</u> <u>Clause 654 -- Exemption of dormant company from requirement to deliver annual return</u> <u>Clause 655 -- Contents of annual return</u> <u>Clause 656 -- Construction of reference to annual return</u></p> <p>The Administration's briefing on the above clauses, and the Chairman seeking clarification on clause 653</p>	
015609-020020	Administration Chairman	<p><u>Schedule 6 -- Information to be Contained in Annual Return and Documents by which Annual Return must be Accompanied</u></p> <p>The Administration's briefing on the above schedule</p> <p>The Chairman's enquiry on section 2 of Schedule 6 and the Administration's response</p>	
020021-021649	Administration Chairman ALA2 Mr Ronny TONG Mr Albert HO	<p><u>Schedule 10 -- Transitional and Saving Arrangements (for Part 12)</u></p> <p><i>Sections 92 to 113</i></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on sections 108 and 110</p> <p>Request for the Administration to review --</p> <p>(a) the reference to "shadow director" in section 108 to avoid confusion; and</p> <p>(b) the transitional arrangement for the registration of a company secretary's correspondence address</p>	<p>The Administration to take action as in paragraphs 2(h) and 2(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		under section 110, taking into account that the company secretary could be a service agency but not an employee of the company	
<i>Break (021650- 024030)</i>			
<u>Follow-up actions for the meetings held on 4, 11 and 18 November 2011 relating to Parts 3, 4 and 7 of the Bill (LC Paper No. CB(1)744/11-12(03))</u>			
024031-024522	Administration	Briefing on the paper (paragraphs 1 to 3) (clause 114)	
024523-031103	Administration Chairman Mr Albert HO Ms Audrey EU	Briefing on the Administration's response to deputations' views on Parts 2 and 3 of CB (LC Paper No. CB(1)339/11-12(01)) Discussion on deputations' views on Division 4 (Registration of Document) and Division 7 (Materials in Companies Register Unavailable for Public Inspection) of Part 2 of CB Request for the Administration to -- (a) re-consider providing in CB a time limit for the Registrar to reply to a company as to whether a document was acceptable for registration (clause 33); and (b) consider whether it would be a better arrangement for the Administrative Appeals Board, rather than the court, to be empowered to hear appeals against the Registrar's refusal to disclose a protected address and to make an order for disclosure (clause 54)	The Administration to take action as in paragraphs 2(j) and 2(k) of the minutes
031104-033219	Administration Mr Andrew LEUNG	The Administration's briefing on the paper (paragraphs 4 to 38) (clauses 146, 304, 306, 310, 318, 328 and 330)	
033220-035756	Administration	Briefing on the Administration's response to deputations' views on Parts 6 to 8 of CB (LC Paper No. CB(1)339/11-12(01))	

Time marker	Speaker	Subject(s)	Action required
035757- 035857	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
27 September 2012