

立法會
Legislative Council

LC Paper No. CB(1)2654/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twenty-sixth meeting held on
Friday, 13 January 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Starry LEE Wai-king, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., 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 Paul CHAN Mo-po, MH, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yea, GBS, JP
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 Rita HO
Registry Solicitor
Companies Registry

Mrs Karen HO
Deputy Principal Solicitor
(Company Law Reform)
Companies Registry

Miss Hilda CHANG
Deputy Registry Manager (Registration)
Companies Registry

Ms Margaret CHAN
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)807/11-12(01) -- Comparison Table for Part 14 -- Remedies for Protection of Companies' or Members' Interests
- LC Paper No. CB(1)807/11-12(02) -- Comparison Table for Part 15 -- Dissolution by Striking off or Deregistration
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 14, Part 15 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)2389/10-11(01) -- Administration's paper on Part 13 and Part 14 of the Companies Bill
- LC Paper No. CB(1)2439/10-11(06) -- Administration's paper on Part 15 and Part 19 of the Companies Bill)

Action

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 713 -- When Court may order remedies

- (a) to provide written information and statistics on precedent cases where the Financial Secretary petitioned the Court under section 168A of the Companies Ordinance ("CO");

Clause 717 -- Application of section 718

- (b) to provide information about --
 - (i) cases in New Zealand relating to court injunction in respect of breach of company articles (clause 717(4)(c));
 - (ii) the reasons for the company law in the United Kingdom not including provisions similar to clause 717(2);
 - (iii) the application of section 350B (Injunctions) of CO since its enactment in 2004;

Clause 720 -- (Interpretation)

- (c) to provide information --
 - (i) to clarify whether statutory derivative actions were extended to proceedings of any court (instead of proceedings of the Court of First Instance only) as reflected in the definition of "proceedings" under this clause;
 - (ii) to explain why common law derivative actions had to be retained;

Divisions 2 (Remedies for Unfair Prejudice to Members' Interests) and 3 (Remedies for Others' Conduct in relation to Companies etc.)

- (d) to consult legal practitioners and consider whether the procedures for applications under Division 2 and Division 3 should be aligned;

Action

- (e) to consider whether a clause similar to clause 716 should be introduced in Division 3 so as to empower the Chief Justice to make rules for actions under that Division;

Clause 728 -- (Interpretation)

- (f) to consider amending clause 728 so that "record" would include electronic record;

Clause 730 -- (Preservation of secrecy)

- (g) to consider amending clause 730 to the effect that both the applicant(s) and other persons who inspected the records would be bound by the clause;

Division 5 (Members' Inspection of Company's Records)

- (h) to consider adding a provision similar to section 152FE of CO (nothing in the provisions shall authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486)) to Division 5 of Part 14 of the Companies Bill ("CB");
- (i) to provide a list of types of records that minority shareholders of a company might inspect under various provisions of CB without making an application to the Court;

Clause 732 -- Registrar may send inquiry letter to company

- (j) to provide the numbers of companies struck off by the Registrar of Companies in 2009, 2010 and 2011; and

Clause 738 -- Application for deregistration

- (k) to revise the formulation of clause 738(2)(e) so that it would cover the situation where a company held immovable property indirectly, for example, by holding shares in another company which held the immovable property.

Action

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 3 February 2012 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 11:46 am.

Council Business Division 1
Legislative Council Secretariat
27 September 2012

Bills Committee on Companies Bill

**Proceedings of the twenty-sixth meeting
on Friday, 13 January 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000800-001019	Deputy Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 14 of the Bill (LC Paper No. CB(1)807/11-12(01))</u>			
001020-001506	Administration Deputy Chairman	<u>Clause 711 -- Interpretation</u> <u>Clause 712 -- Interpretation</u> <u>Clause 713 -- When Court may order remedies</u> The Administration's briefing on the above clauses The Deputy Chairman's request, with regard to clause 713(2), for the Administration to provide information and statistics on precedent cases where the Financial Secretary petitioned the Court under section 168A of the Companies Ordinance ("CO")	The Administration to take action as in paragraph 2(a) of the minutes
001507-002116	Administration Deputy Chairman	<u>Clause 714 -- Remedies that Court may order</u> <u>Clause 715 -- Alteration of articles by order of Court</u> <u>Clause 716 -- Chief Justice may make rules</u> The Deputy Chairman seeking clarification on clauses 714 and 716	
002117-004114	Administration Ms Audrey EU Assistant Legal Adviser 2 ("ALA2") Deputy Chairman	<u>Clause 717 -- Application of section 718</u> Discussion on the clause Request for the Administration to provide information about -- (a) cases in New Zealand relating to	The Administration to take action as in paragraph 2(b) of

Time marker	Speaker	Subject(s)	Action required
		<p>court injunction in respect of breach of company articles (clause 717(4)(c));</p> <p>(b) the reasons for the company law in the United Kingdom not including provisions similar to clause 717(2); and</p> <p>(c) the application of section 350B (Injunctions) of CO since its enactment in 2004 which was restated in clauses 717 to 719 of the Companies Bill ("CB")</p>	the minutes
004115-004308	Administration	<p><u>Clause 718 -- Court may order remedies</u> <u>Clause 719 -- Provisions supplementary to section 718</u></p> <p>Briefing on the above clauses</p>	
004309-010011	Administration ALA2 Deputy Chairman	<p><u>Clause 720 -- Interpretation</u> <u>Clause 721 -- Member of company or of associated company may bring or intervene in proceedings</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the definition of "proceedings" under clause 720</p> <p>Request for the Administration to provide information --</p> <p>(a) to clarify whether statutory derivative actions were extended to proceedings of any court (instead of proceedings of the Court of First Instance only) as reflected in the definition of "proceedings" under clause 720; and</p> <p>(b) to explain why common law derivative actions had to be retained</p> <p>The Administration's advice that the word "Court" in clause 721(1) would be replaced by "court"</p>	The Administration to take action as in paragraph 2(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		The Administration's briefing on its response to deputations' views on Part 14 of CB (LC Paper No. CB(1)339/11-12(01))	
010012-012219	Ms Audrey EU Administration ALA2	<p>Discussion on practical issues that might arise from legal actions on cases related to both Division 2 (Remedies for Unfair Prejudice to Members' interest, clauses 712 to 716) and Division 3 (Remedies for Others' Conduct in relation to Companies etc., clauses 717 to 719) of Part 14 of CB</p> <p>Request for the Administration to --</p> <p>(a) consult legal practitioners and consider whether the procedures for applications under Division 2 and Division 3 should be aligned; and</p> <p>(b) consider whether a clause similar to clause 716 should be introduced in Division 3 so as to empower the Chief Justice to make rules for actions under that Division</p>	The Administration to take action as in paragraphs 2(d) and 2(e) of the minutes
012220-012533	Administration	<p><u>Clause 722 -- Leave of Court to bring or intervene in proceedings</u></p> <p><u>Clause 723 -- Approval or ratification of conduct does not bar derivative action</u></p> <p><u>Clause 724 -- No discontinuance or settlement of proceedings without leave of Court</u></p> <p>Briefing on the above clauses</p>	
012534-013726	Administration Deputy Chairman ALA2 Ms Audrey EU	<p><u>Clause 725 -- Court may dismiss derivative proceedings brought by member under common law etc.</u></p> <p>The Administration's briefing on the clause</p> <p>Discussion on the reasons for retaining common law derivative actions</p>	
013727-014140	Administration ALA2	<u>Clause 726 -- Court's general powers to order and direct</u>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 727 -- Court may order costs</u></p> <p>The Administration's briefing on the above clauses and ALA2 seeking clarification on clause 726</p>	
014141-015106	Administration Ms Audrey EU ALA2	<p><u>Clause 728 -- Interpretation</u> <u>Clause 729 -- Court may order inspection of records</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the definition of "record" under clause 728</p> <p>Request for the Administration to consider amending clause 728 so that "record" would include electronic record</p>	The Administration to take action as in paragraph 2(f) of the minutes
015107-020224	Administration Deputy Chairman Senior Assistant Legal Adviser 3 ("SALA3") ALA2 Ms Audrey EU	<p><u>Clause 730 -- Preservation of secrecy</u> <u>Clause 731 -- Legal professional privilege</u></p> <p>Discussion on the above clauses</p> <p>Request for the Administration to consider --</p> <p>(a) amending clause 730 to the effect that both the applicant(s) and other persons who inspected the records would be bound by the clause; and</p> <p>(b) adding a provision similar to section 152FE of CO (nothing in the provisions shall authorize the collection, retention or use of personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486)) to Division 5 of Part 14 of CB</p>	The Administration to take action as in paragraphs 2(g) and 2(h) of the minutes
020225-020547	Administration SALA3	<p><u>Schedule 10 -- Transitional and Saving Arrangements (for Part 14)</u> <i>Sections 116 to 119</i></p> <p>The Administration's briefing on the above clauses</p>	

Time marker	Speaker	Subject(s)	Action required
		SALA3 seeking clarification on section 116	
<i>Break (020548- 022913)</i>			
022914-023419	Deputy Chairman Administration	<p>The Deputy Chairman's enquiry on the types of records that minority shareholders of a company might inspect under various provisions of CB without making an application to the Court</p> <p>The Administration's response that --</p> <p>(a) the provisions in Parts 9 and 12, etc. of CB set out various types of company records that a company shall provide to members; and</p> <p>(b) it would provide supplementary information on this subject</p>	The Administration to take action as in paragraph 2(i) of the minutes
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 15 of the Bill (LC Paper No. CB(1)807/11-12(02))</u></p>			
023420-025257	Administration SALA3 Ms Audrey EU	<p><u>Clause 732 -- Registrar may send inquiry letter to company</u> <u>Clause 733 -- Registrar must follow up under certain circumstances</u> <u>Clause 734 -- Registrar may strike off company's name</u></p> <p>Discussion on the above clauses and the existing procedures for the Registrar of Companies ("the Registrar") to strike off names of companies from the Companies Register</p> <p>Ms Audrey EU's concern that the measures taken by the Registrar in finding out inactive companies, which should be struck off from the Companies Register, were not effective</p> <p>Request for the Administration to provide the numbers of companies struck off by the Registrar in 2009, 2010 and 2011</p>	The Administration to take action as in paragraph 2(j) of the minutes

Time marker	Speaker	Subject(s)	Action required
025258-025606	Administration	<p><u>Clause 735 -- Registrar's duty to act in case of company being wound up</u> <u>Clause 736 -- Court may strike off name of company not appropriate to be wound up</u></p> <p>Briefing on the above clauses</p>	
025607-031259	Administration Ms Audrey EU SALA3	<p><u>Clause 737 -- Interpretation</u> <u>Clause 738 -- Application for deregistration</u></p> <p>Discussion on clause 738</p> <p>Ms Audrey EU's enquiry on the reason for requiring that the assets of a company applying for deregistration must not consist of any immovable property situated in Hong Kong, and the Administration's response</p> <p>Ms Audrey EU's concern that the current formulation of clause 738(2)(e) might not be able to cover the situation where a company held immovable property indirectly, for example, by holding shares in another company which held the immovable property</p> <p>Request for the Administration to review the formulation of the clause</p>	<p>The Administration to take action as in paragraph 2(k) of the minutes</p>
031300-031447	Administration	<p><u>Clause 739 -- Registrar may deregister company</u></p> <p>The Administration's briefing on the clause and its response to deputations' views on Division 2 of Part 15 of CB (LC Paper No. CB(1)339/11-12(01))</p>	
031448-031635	Deputy Chairman	Date of next meeting	

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27 September 2012