

立法會
Legislative Council

LC Paper No. CB(1)2655/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the twenty-seventh meeting held on
Friday, 3 February 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 Starry LEE Wai-king, JP (Deputy Chairman)
Hon Miriam LAU Kin-ye, 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
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC

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

Ms Rita HO
Registry Solicitor
Companies Registry

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

Ms Polly YIP
Assistant Principal Solicitor
Companies Registry

Miss Nancy YAU
Acting Deputy Registry Manager
(Company Formation & Enforcement)
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(02) -- Comparison Table for Part 15 -- Dissolution by Striking off or Deregistration
- LC Paper No. CB(1)744/11-12(04) -- Comparison Table for Part 13 -- Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 13, 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

Action

Part 15 and Part 19 of the Companies Bill

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)

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 744 -- Liabilities of directors etc. of dissolved company continue

(a) to revise the drafting of clause 744 so as to clarify the meaning of a director's "liabilities" for a dissolved company;

Clause 746 -- former director must keep dissolved company's books and papers for 6 years

(b) to consider adding a defence to clause 746 for a director who had reasonable excuses for not being able to keep the company's books and papers after the dissolution of the company, for example, in cases where the books and papers were kept by other directors;

Clause 664 -- Court may sanction arrangement or compromise

(c) to provide statistics and information on past privatization schemes rejected by the court for reasons associated with the headcount test;

(d) to provide information about the Administration's measures, besides retention of the headcount test, to protect the interest of minority shareholders in relation to scheme of compromise or arrangement;

Clause 669 -- Vertical amalgamation

Clause 670 -- Horizontal amalgamation

Action

- (e) to consider revising clauses 669 and 670 so that a company with floating charge would be allowed to use the amalgamation procedures under the clauses as long as the relevant creditors had given consent to the company;

Clause 671 -- Directors of amalgamating company must notify secured creditors of proposed amalgamation

- (f) to consider adding "generally" after "circulating" in clause 671(2)(b) to ensure consistency in use of words throughout the Bill;

Clause 673 -- Registration of amalgamation

- (g) to consider amending "the value of that company" in clause 673(1)(e) to "the value of that company's assets" to clarify and improve the drafting; and

Clause 684 -- Offeror's right to buy out minority shareholders

- (h) to consider deleting clause 684(4)(d) to maintain the position under the Companies Ordinance.

II Any other business

- 3. The Bills Committee agreed that a meeting be arranged to meet deputations for their views on clause 664 (relating to the retention of the "headcount test" for members' schemes).

(Post-meeting note: The meeting with deputations was held on 23 March 2012 at 9:30 am.)

- 4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 10 February 2012 at 8:30 am to meet with the Administration.

- 5. There being no other business, the meeting ended at 11:54 am.

Council Business Division 1
Legislative Council Secretariat
27 September 2012

Bills Committee on Companies Bill

**Proceedings of the twenty-seventh meeting
on Friday, 3 February 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001-000311	Chairman	Opening remarks	
<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>			
000312-000722	Administration	<u>Clause 740 -- Dissolved company's property vested in Government</u> <u>Clause 741 -- Disclaimer of dissolved company's property</u> <u>Clause 742 -- Effect of disclaimer</u> <u>Clause 743 -- Court may make vesting order</u> Briefing on the above clauses and response to deputations' views on clause 740 (LC Paper No. CB(1)339/11-12(01))	
000723-001059	Administration Mr Jeffrey LAM Administration Ms Miriam LAU	<u>Clause 744 -- Liabilities of directors etc. of dissolved company continue</u> The Administration's briefing on the clause Mr Jeffrey LAM's enquiry about the validity period for the liability of every director, manager and member of a dissolved company, and the Administration's response Ms Miriam LAU's concern that the meaning of "liability" in the clause was unclear as a director of a company would have a wide range of liabilities vis-à-vis different parties Request for the Administration to revise the drafting of clause 744 to clarify the meaning of a director's "liabilities" for a dissolved company	The Administration to take action as in paragraph 2(a) of

Time marker	Speaker	Subject(s)	Action required
			the minutes
001100-002527	Administration Chairman Mr Jeffrey LAM Mr Andrew LEUNG Senior Assistant Legal Adviser 3 ("SALA3")	<p><u>Clause 745 -- Registrar may act as dissolved company's or liquidator's representative</u></p> <p><u>Clause 746 -- Former director must keep dissolved company's books and papers for 6 years</u></p> <p><u>Clause 747 -- Court's power to wind up dissolved companies</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the requirement for a director of a dissolved company to keep the company's books and papers for at least 6 years under clause 746, and operational issues relating to the clause</p> <p>Request for the Administration to consider adding a defence to clause 746 for a director who had reasonable excuses for not being able to keep the company's books and papers after the dissolution of the company, for example, in cases where the books and papers were kept by other directors</p> <p>Mr Jeffrey LAM's enquiry on the time limit for a company to wind up upon its dissolution under clause 747, and the Administration's response</p>	The Administration to take action as in paragraph 2(b) of the minutes
002528-002741	Administration Mr Andrew LEUNG	<p><u>Clause 748 -- Application to Registrar for restoration of company</u></p> <p><u>Clause 749 -- Conditions for granting application</u></p> <p>The Administration's briefing on the above clauses</p> <p>Mr Andrew LEUNG's enquiry on the time limit for making application for restoration of company to the Registrar of Companies ("the Registrar"), and the Administration's response</p>	
002742-	Administration	<u>Clause 750 -- Registrar's decision on</u>	

Time marker	Speaker	Subject(s)	Action required
004305	<p>Mr Andrew LEUNG SALA3 Assistant Legal Adviser 2 ("ALA2") Ms Miriam LAU Mr Abraham SHEK Chairman</p>	<p><u>application</u> <u>Clause 751 -- Registrar may restore company deregistered by mistake</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the liabilities of the Registrar and the Government for deregistration of company by mistake, with reference to clause 751 and clause 58 (Immunity)</p> <p>Mr Abraham SHEK's view that the Government must take responsibilities for its mistakes regardless whether legal actions could be taken against it</p>	
004306-005203	Administration	<p><u>Clause 752 -- Effect of restoration</u> <u>Clause 753 -- Application to Court for restoration</u> <u>Clause 754 -- When application must be made</u> <u>Clause 755 -- Court's decision on application</u> <u>Clause 756 -- Effect of restoration</u> <u>Clause 757 -- Company's name on restoration</u> <u>Clause 758 -- Company must change prohibited name</u> <u>Clause 759 -- Registrar may direct company to change same or similar name etc.</u> <u>Clause 760 -- Registrar may change company name in case of failure to comply with direction</u> <u>Clause 761 -- Effect of restoration on bona vacantia property or right</u> <u>Schedule 10 -- Transitional and Saving Arrangements (for Part 15)</u> <i>(Sections 120 to 123)</i></p> <p>Briefing on the above clauses, and response to deputations' views on clauses 740 and 761 (LC Paper No. CB(1)339/11-12(01))</p>	
<u>Discussion on the scrutiny of consequential amendments</u>			

Time marker	Speaker	Subject(s)	Action required
005204-005906	Chairman SALA3 Administration Clerk Mr Abraham SHEK	<p>Discussion on how the Bills Committee would scrutinize the consequential amendments pursuant to the Companies Bill ("CB")</p> <p>The Chairman's advice that --</p> <ul style="list-style-type: none"> (a) as agreed at a previous meeting, the bulk of consequential amendments to CB (other than those contained in the current Schedule 9 to CB) should be introduced through Committee Stage amendments to CB; (b) as the Administration's papers on such consequential amendments were voluminous (amounting to some 2 900 pages), they would be provided to members in the form of electronic copies through email in order to save papers; (c) to facilitate members' perusal on the documents, hard copies would be provided to members upon request; and (d) the Legal Advisers to the Bills Committee would assist members in scrutinizing the consequential amendments <p>SALA3's advice that the consequential amendments were mainly technical in nature and included amendments to the remaining provisions in the current Companies Ordinance ("CO"), which would be re-titled as Companies (Winding Up and Miscellaneous Provisions) Ordinance, and subsidiary legislation of CO, as well as amendments to other ordinances and subsidiary legislation in the Laws of Hong Kong. To assist members in the scrutiny of the consequential amendments, the Legal Service Division would first study the amendments and discuss with the Administration the technical and drafting matters. The amendments would then</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>be categorized according to categories agreed with the Administration to facilitate scrutiny by members. It was expected that one to two meetings would be required for examining the amendments.</p> <p>Members agreed to the above arrangements.</p>	
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 13 of the Bill (LC Paper No. CB(1)744/11-12(04))</u></p>			
005907-010354	Administration	<p><u>Clause 657 -- Interpretation</u> <u>Clause 658 -- Associate</u></p> <p>The Administration's briefing on the above clauses</p> <p>ALA2's advice that the reference to "an associate of an offeror or member" should be revised to align with the amendments to be made to clause 477 (Connected entity)</p>	
010355-010651	Administration	<p><u>Clause 659 -- Interpretation</u> <u>Clause 660 -- Application of Division</u> <u>Clause 661 -- Court may order meeting of creditors or members to be summoned</u> <u>Clause 662 -- Explanatory statements to be issued or made available to creditors or members</u> <u>Clause 663 -- Directors and trustees must notify company of interests under arrangement or compromise etc.</u></p> <p>Briefing on the above clauses</p>	
010652-020434	<p>Administration</p> <p>Mr Abraham SHEK Chairman</p> <p>Mr Andrew LEUNG Mr Jeffrey LAM Ms Miriam LAU Deputy Chairman</p>	<p><u>Clause 664 -- Court may sanction arrangement or compromise</u></p> <p>The Administration's briefing on the clause, its advice that views of deputations and members on the retention of headcount test or otherwise for approving a scheme of compromise or arrangement would be carefully considered, and the Administration would revert to the Bills Committee on</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the subject in due course</p> <p>Mr Abraham SHEK's views that --</p> <ul style="list-style-type: none">(a) the Administration should not turn a blind eye to the large number of submissions (124 out of 144) received during the consultation in 2008 opposing the retention of the headcount test for members' schemes;(b) the fact that the headcount test was retained in Australia and Singapore was not a reason for Hong Kong to follow suit;(c) the Administration should take the views of the concerned industry and take forward an option which was beneficial to Hong Kong's position as a financial centre;(d) the headcount test was contrary to the "one share, one vote" principle; and(e) though clause 664(2)(c) gave the court a discretion to dispense with the headcount test in special circumstances, it was not desirable to involve the court in business decisions such as privatization and takeovers <p>The Administration's response that --</p> <ul style="list-style-type: none">(a) the retention of the headcount test for members' schemes was supported by the Securities and Futures Commission, the Association of Chartered Certified Accountants (Hong Kong), the Hong Kong Securities Association and Hong Kong Association of Banks; the test served as an essential check on the voting rights test; and(b) the retention of the headcount test,	

Time marker	Speaker	Subject(s)	Action required
		<p>together with the court's discretion to dispense with the test in special circumstances, struck a reasonable balance between protecting the right of minority shareholders and avoiding giving too much veto power to them</p> <p>The Chairman remarked that a number of professional bodies, such as the Law Society of Hong Kong, Hong Kong Bar Association and the Hong Kong Institute of Certified Public Accountants, supported abolishing the headcount test, and their views should be considered</p> <p>Mr Andrew LEUNG's remarks that –</p> <ul style="list-style-type: none"> (a) he agreed to the views of Mr SHEK and the Chairman; (b) the Administration should choose an option that was conducive to Hong Kong's economic development; and (c) abolition of the headcount test did not mean that minority shareholders' interest was to be ignored <p>Mr Jeffrey LAM's remarks that --</p> <ul style="list-style-type: none"> (a) he agreed with members' views above; and (b) the Administration should consider the situation of Hong Kong rather than the laws in other jurisdictions in deciding on whether to retain the headcount test <p>Mr Abraham SHEK's suggestion that a meeting be held to hear deputations' views on clause 664 (relating to the retention of headcount test for members' schemes)</p> <p>Support of the Chairman, Ms Miriam LAU and other members for holding a meeting to meet with deputations</p>	<p>The Clerk to arrange a meeting with deputations to hear views on clause 664</p>

Time marker	Speaker	Subject(s)	Action required
		<p>The Deputy Chairman's request for the Administration to provide --</p> <p>(a) statistics and information on past privatization schemes rejected by the court for reasons associated with the headcount test; and</p> <p>(b) information on the Administration's measures, besides retention of the headcount test, to protect the interest of minority shareholders in relation to scheme of compromise or arrangement</p>	<p>The Administration to take action as in paragraphs 2(c) and 2(d) of the minutes</p>
<i>Break (020435- 022334)</i>			
022335-023050	<p>Chairman Administration Mr Andrew LEUNG SALA3</p>	<p><u>Clause 665 -- Court's additional powers to facilitate reconstruction or amalgamation</u></p> <p>Discussion on the clause</p>	
023051-023343	<p>Administration</p>	<p><u>Clause 666 -- Company's articles to be accompanied by order of Court</u></p> <p>Briefing on the above clauses</p>	
023344-024937	<p>Administration ALA2 Chairman Mr Andrew LEUNG</p>	<p><u>Clause 667 -- Interpretation</u> <u>Clause 668 -- Solvency statement</u> <u>Clause 669 -- Vertical amalgamation</u> <u>Clause 670 -- Horizontal amalgamation</u> <u>Clause 671 -- Directors of amalgamating company must notify secured creditors of proposed amalgamation</u></p> <p>Discussion on the above clauses</p> <p>ALA2's enquiry on the reasons for the different requirements for obtaining approval under clauses 669(3) and 669(4), and the Administration's response</p> <p>The Chairman's enquiry on the penalties for offences under clause 671 and the Administration's response</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Mr Andrew LEUNG's suggestion that a company with floating charge should be allowed to use the amalgamation procedures under clauses 669 and 670 so long as the relevant creditors had given consent to the company</p> <p>Discussion on Mr LEUNG's suggestion and request for the Administration to provide a written response to the suggestion</p> <p>ALA2's suggestion for the Administration to consider adding "generally" after "circulating" in clause 671(2)(b) to ensure consistency in drafting throughout the Bill</p>	<p>The Administration to take action as in paragraphs 2(e) and 2(f) of the minutes</p>
024938-025127	Administration	<p><u>Clause 672 -- Director of amalgamating company must issue certificate on solvency statement</u></p> <p><u>Clause 673 -- Registration of amalgamation</u></p> <p>The Administration's briefing on the above clauses</p> <p>ALA2's suggestion for the Administration to amend "the value of that company" in clause 673(1)(e) to "the value of that company's assets"</p>	<p>The Administration to take action as in paragraph 2(g) of the minutes</p>
025128-025946	Administration	<p><u>Clause 674 -- Effective date of amalgamation</u></p> <p><u>Clause 675 -- Court may intervene in amalgamation proposal in certain cases</u></p> <p><u>Clause 676 -- Interpretation</u></p> <p><u>Clause 677 -- Application of Division to convertible securities and debentures</u></p> <p><u>Clause 678 -- Takeover offer</u></p> <p><u>Clause 679 -- Non-communication etc. does not prevent offer from being takeover offer</u></p> <p><u>Clause 680 -- Shares to which takeover offer relates</u></p> <p><u>Clause 681 -- Revised offer not to be regarded as fresh offer</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 682 -- Offeror may give notice to buy out minority shareholders</u></p> <p>Briefing on the above clauses</p>	
025947-030523	Administration ALA2 Chairman	<p><u>Clause 683 -- Notice to minority shareholders</u></p> <p>Discussion on clause 683(1)(b)(the time limit for giving a notice of a takeover offer)</p>	
030524-031224	Administration Chairman SALA3	<p><u>Clause 684 -- Offeror's right to buy out minority shareholders</u></p> <p>The Chairman's view that the offeror's payment in cash as stipulated in clause 684(4)(d) might not be a preferable option for minority shareholders</p> <p>Request for the Administration to consider deleting clause 684(4)(d) to maintain the position under CO</p>	The Administration to take action as in paragraph 2(h) of the minutes
031225-031345	Administration	<p><u>Clause 685 -- Obligations of offeror with right to buy out minority shareholders</u></p> <p><u>Clause 686 -- Company must register offeror as shareholder</u></p> <p><u>Clause 687 -- Company must hold consideration paid by offeror on trust</u></p> <p>Briefing on the above clauses</p>	
031346-032144	Administration Mr Andrew LEUNG Chairman ALA2 SALA3	<p><u>Clause 688 -- Provisions supplementary to section 687</u></p> <p>Discussion on the meaning of "the company has made reasonable enquiries at reasonable intervals" in clause 688(1)(b)</p>	
032145-032334	Chairman Administration Mr Andrew LEUNG Clerk	<p>Date of next meeting</p> <p>Date of meeting with deputations on clause 664</p>	

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