

**立法會**  
**Legislative Council**

LC Paper No. CB(1)6/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/10/2

**Bills Committee on Companies Bill**

**Minutes of the twenty-ninth meeting held on  
Friday, 17 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)  
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 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 Albert HO Chun-yan  
Hon Miriam LAU Kin-ye, GBS, JP
- Public officers attending** : **Agenda item I**  
Mr Darryl CHAN  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)

Mr Maurice LOO  
Principal Assistant 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 Phyllis MCKENNA  
Deputy Principal Solicitor (Company Law Reform)  
Companies Registry

Ms Kitty TSUI  
Senior Solicitor (Company Law Reform)  
Companies Registry

Mr CHUNG Wai-tim  
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

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Action

**I Meeting with the Administration**

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)1003/11-12(03) -- Comparison Table for Part 19 -- Investigations and Enquiries
- LC Paper No. CB(1)1052/11-12(01) -- Comparison Table for Part 20 -- Miscellaneous
- LC Paper No. CB(3)412/10-11 -- The Bill (Parts 19, 20 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)2439/10-11(06) -- Administration's paper on Part 15 and Part 19 of the Companies Bill
- LC Paper No. CB(1)2636/10-11(03) -- Administration's paper on Part 20 and Part 21 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 826 -- Interpretation

- (a) to review the use of the words "the same person" in clause 826(2)(b) to clarify that the provision would cover a body of persons;

Clause 828 -- Appointment of inspector on application by company or members

- (b) to review the drafting of clause 828(4), i.e. to change the presentation of the provision to a positive manner so as to reflect that public interest was the primary consideration of the Financial Secretary ("FS") in the appointment of inspector to investigate company's affairs;

Clause 829 -- Appointment of inspector on Court's or Financial Secretary's initiative

- (c) to provide information about the considerations that FS would take into account in deciding whether it was in the public interest to investigate a company's affairs;
- (d) to provide the number of cases over the years in which FS had invoked the power to appoint inspectors to investigate a company;

Clause 830 -- Notice of appointment as inspector to be delivered to Registrar

- (e) to consider whether a time limit should be specified in clause 830 for the delivery of notice of appointment as inspector to the Registrar of Companies;

Clause 854 -- Expenses of investigation

- (f) to consider amending clause 854 such that only reasonable expenses of investigation would be repaid to the Government;

Action

Clause 865 -- Magistrate's warrants

- (g) to consider amending clause 865(1) such that the information to be obtained would be specified before a Magistrate's warrant was issued, and that the scope of the power under this clause would be confined to specific provisions;

Clause 873 -- Protection of informers etc.

- (h) to review whether "an informer" in clause 873 could be replaced by the neutral term "a person", as "informer" was not defined;
- (i) to consider whether a person who passively assisted in an investigation should have the protection under the clause;

Clause 880 -- Appointment of person by company to investigate its affairs

- (j) to provide information on the remedy available for any non-compliance with the requirements made by a person appointed by a company to investigate the company's affairs under clause 880;

Clause 889 -- Application of fines

- (k) to review clause 889 with respect to the appropriateness of rewarding a person on whose information or at whose suit a fine was recovered;

Clause 896 -- Paperless holding and transfer of shares and debentures

- (l) to consider removing clause 896 and Schedule 8, as the proposals relating to paperless holding and transfer of shares and debentures contained in Schedule 8 were subject to change pending the introduction of a separate bill on the scripless securities market; and

Schedule 10 -- section 141

- (m) to consider amending the heading before section 141 of Schedule 10 from "Other Transitional and Saving

Action

Arrangements" to "Transitional and Saving Arrangements for Part 20", as section 141 was related to Part 20.

**II Any other business**

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 24 February 2012 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 12:34 pm.

Council Business Division 1  
Legislative Council Secretariat  
11 October 2012

## Bills Committee on Companies Bill

**Proceedings of the twenty-ninth meeting  
on Friday, 17 February 2012, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
001137-001423	Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 19 of the Bill (LC Paper No. CB(1)1003/11-12(03))</u>			
001424-003259	Administration Ms Audrey EU Senior Assistant Legal Adviser 3 ("SALA3") Mr Ronny TONG	<u>Clause 826 -- Interpretation</u> <u>Clause 827 -- Interpretation</u> <u>Clause 828 -- Appointment of inspector on application by company or members</u>  The Administration's briefing on the above clauses  Discussion on the definition of "associated body corporate" (clause 826(2))  Mr Ronny TONG's suggestion for the Administration to --  (a) review the use of the words "the same person" in clause 826(2)(b) to clarify that the provision would cover a body of persons; and  (b) review the drafting of clause 828(4) to change the presentation of the provision to a positive manner so as to reflect that public interest was the primary consideration of the Financial Secretary ("FS") in the appointment of inspector to investigate company's affairs	The Administration to take action as in paragraphs 2(a) and 2(b) of the minutes
003300-004815	Administration Deputy Chairman Chairman Mr Andrew LEUNG SALA3	<u>Clause 829 -- Appointment of inspector on Court's or Financial Secretary's initiative</u>  Discussion on the clause and the considerations that FS would take into account in deciding whether to investigate a company's affairs	

Time marker	Speaker	Subject(s)	Action required
		<p>Request for the Administration to provide information about the considerations that FS would take into account in deciding whether it was in the public interest to investigate a company's affairs, and the number of cases over the years in which FS had invoked the power to appoint inspector to investigate company's affairs</p> <p>The Administration's briefing on its response to deputations' views on general issues relating to Part 19 of the Companies Bill ("CB") (LC Paper No. CB(1)339/11-12(01))</p>	<p>The Administration to take action as in paragraphs 2(c) and 2(d) of the minutes</p>
004816-005502	Administration Mr Andrew LEUNG Chairman	<p><u>Clause 830 -- Notice of appointment as inspector to be delivered to Registrar</u></p> <p>The Administration's briefing on the clause</p> <p>Discussion on what constituted "a reasonable time" within which a person who had been appointed as an inspector under clause 828 or 829 must deliver a notice of the appointment to the Registrar of Companies ("the Registrar") for registration</p> <p>Request for the Administration to consider whether a time limit should be specified for the delivery of the notice</p>	<p>The Administration to take action as in paragraph 2(e) of the minutes</p>
005503-005711	Administration Mr Ronny TONG	<p><u>Clause 831 -- General power of Financial Secretary to give directions regarding investigation</u></p> <p><u>Clause 832 -- Financial Secretary may give directions regarding subject matter of investigation etc.</u></p> <p><u>Clause 833 -- Financial Secretary may give directions to terminate or suspend investigation</u></p> <p>The Administration's briefing on the above clauses</p>	

Time marker	Speaker	Subject(s)	Action required
		Mr Ronny TONG's enquiry on the purpose of clause 833 (a new provision) and the Administration's response	
005712-010803	Administration Mr Andrew LEUNG	<p><u>Clause 834 -- Inspector may require production of records and documents etc.</u></p> <p><u>Clause 835 -- Inspector may require production of director's accounts</u></p> <p><u>Clause 836 -- Provisions supplementary to sections 834 and 835: powers to require explanation etc.</u></p> <p><u>Clause 837 -- Inspector may exercise powers in relation to associated body corporate</u></p> <p><u>Clause 838 -- Delegation of powers by inspector</u></p> <p>The Administration's briefing on the above clauses</p> <p>Mr Andrew LEUNG's enquiries on the extent of delegation of an inspector's power (clause 838) and the Administration's response</p>	
010804-011517	Administration Chairman	<p><u>Clause 839 -- Resignation of inspector</u></p> <p><u>Clause 840 -- Revocation of appointment of inspector by Financial Secretary</u></p> <p><u>Clause 841 -- Appointment of replacement inspector</u></p> <p><u>Clause 842 -- Former inspector must hand over documents etc.</u></p> <p><u>Clause 843 -- Interim report to be made by inspector etc.</u></p> <p><u>Clause 844 -- Final report to be made by inspector etc.</u></p> <p><u>Clause 845 -- Interim report or final report may cover affairs of associated body corporate</u></p> <p><u>Clause 846 -- Inspector must send report to affected persons etc.</u></p> <p>The Administration's briefing on the above clauses</p> <p>The Chairman's enquiry on clause 846(2)(a) on reasons for the inspector to cause any passage in the draft report to be concealed</p>	

Time marker	Speaker	Subject(s)	Action required
		from view and the Administration's response	
011518-011640	Administration Chairman	<p><u>Clause 847 -- Financial Secretary to file copies of inspector's report with Court</u></p> <p>The Administration's briefing on the clause</p> <p>The Chairman's enquiry on clause 847(2) (i.e. the Financial Secretary may specify the manner in which access to the report is to be restricted) and the Administration's response</p>	
011641-012549	Administration Deputy Chairman SALA3	<p><u>Clause 848 -- Financial Secretary may send copies of inspector's report to applicants of investigation etc.</u></p> <p>The Administration's briefing on the clause</p> <p>Discussion on FS's discretion on the publication of an inspector's report and his considerations in making the decision</p>	
012550-013404	Administration Chairman SALA3	<p><u>Clause 849 -- Publication of inspector's report</u></p> <p><u>Clause 850 -- Inspector's report to be evidence</u></p> <p><u>Clause 851 -- Offences for failing to comply with requirements under Subdivision 4 etc.</u></p> <p><u>Clause 852 -- Inspector may apply to Court to inquire into failure to comply with requirements under Subdivision 4</u></p> <p><u>Clause 853 -- Use of incriminating evidence in proceedings</u></p> <p>The Administration's briefing on the above clauses</p> <p>The Chairman and SALA3 seeking clarification on clause 853(2)</p>	
013405-015138	Administration Chairman Deputy Chairman SALA3	<p><u>Clause 854 -- Expenses of investigation</u></p> <p>Discussion on the clause</p> <p>The Deputy Chairman's declaration of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>interest that she had been an employee of an accounting firm</p> <p>Members' concern over control on the expenses of investigation</p> <p>Request for the Administration to consider amending the clause such that only reasonable expenses would be repaid to the Government</p>	<p>The Administration to take action as in paragraph 2(f) of the minutes</p>
015139-020040	Administration	<p><u>Clause 855 -- Interpretation</u></p> <p><u>Clause 856 -- Circumstances under which Financial Secretary may enquire into company's affairs</u></p> <p><u>Clause 857 -- Financial Secretary may require production of records and documents etc.</u></p> <p><u>Clause 858 -- Financial Secretary may delegate powers under section 857</u></p> <p><u>Clause 859 -- Offences for failing to comply with requirements under section 857 etc.</u></p> <p><u>Clause 860 -- Use of incriminating evidence in proceedings</u></p> <p>Briefing on the above clauses</p>	
020041-020447	Administration Mr WONG Ting-kwong	<p><u>Clause 861 -- Registrar may require production of records and documents etc.</u></p> <p><u>Clause 862 -- Registrar may delegate powers under section 861</u></p> <p><u>Clause 863 -- Offences for failing to comply with requirements under section 861 etc.</u></p> <p>The Administration's briefing on the above clauses</p> <p>Mr WONG Ting-kwong's enquiry on why FS might delegate powers under clause 857 to another person (clause 858) but the Registrar might only delegate the powers conferred under clause 861 to any public officer (clause 862) and the Administration's response</p>	

Time marker	Speaker	Subject(s)	Action required
020448-020754	Administration	<p><u>Clause 864 -- Use of incriminating evidence in proceedings</u></p> <p>Briefing on the clause and the Administration's response to deputations' views on clause 864 (LC Paper No. CB(1)339/11-12(01))</p>	
020755-021821	Administration SALA3	<p><u>Clause 865 -- Magistrate's warrants</u></p> <p>Discussion on the clause</p> <p>SALA3's view that to prevent fishing expedition, the Magistrate should issue a warrant only when he was satisfied that there were records of documents required to be produced for an investigation/enquiry under Division 2/3 of Part 19 in a specified premises</p> <p>Request for the Administration to consider amending the clause such that the information to be obtained would be specified before a Magistrate's warrant was issued, and that the scope of the power under this clause would be confined to specific provisions</p>	<p>The Administration to take action as in paragraph 2(g) of the minutes</p>
<i>Break (021822 - 024004)</i>			
024005-025454	Administration Mr Ronny TONG	<p><u>Clause 866 -- Officers must give assistance in prosecution instituted as a result of investigation etc.</u></p> <p><u>Clause 867 -- Proceedings on specified materials</u></p> <p><u>Clause 868 -- Preservation of secrecy</u></p> <p><u>Clause 869 -- Permitted disclosure and restrictions</u></p> <p><u>Clause 870 -- Offences on breach of secrecy</u></p> <p>The Administration's briefing on the above clauses</p> <p>Mr Ronny TONG's enquiry on the purpose of preservation of secrecy (clause 868) and the Administration's response</p>	

Time marker	Speaker	Subject(s)	Action required
025455-030430	Administration	<p><u>Clause 871 -- Interpretation</u>  <u>Clause 872 -- Protection in relation to certain disclosures</u>  <u>Clause 873 -- Protection of informers etc.</u>  <u>Clause 874 -- Legal professional privilege</u>  <u>Clause 875 -- Immunity</u>  <u>Clause 876 -- Production of information in information systems etc.</u>  <u>Clause 877 -- Lien claimed on records or documents</u>  <u>Clause 878 -- Destruction of documents</u>  <u>Clause 879 -- Inspection of records or documents seized etc.</u></p> <p>The Administration's briefing on the above clauses</p>	
030431-031903	Mr James TO Administration Chairman SALA3	<p><u>Clause 873 -- Protection of informers etc.</u></p> <p>Discussion on the justifications for protecting the identity of an informer in any proceedings before a court</p> <p>Mr James TO's enquiry on --</p> <p>(a) whether "an informer" in this clause could be replaced by the neutral term "a person", as "informer" was not defined; and</p> <p>(b) whether a person who passively assisted in an investigation should have the protection under the clause</p> <p>Request for the Administration to provide a written response to Mr TO's enquiry</p>	The Administration to take action as in paragraphs 2(h) and 2(i) of the minutes
031904-032831	Administration Mr James TO SALA3	<p><u>Clause 880 -- Appointment of person by company to investigate its affairs</u></p> <p>Discussion on the clause</p> <p>Mr James TO's enquiry on the reasons for requiring a special resolution of a company to appoint a person to investigate its affairs and the Administration's response</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Discussion on whether there was any remedy available for any non-compliance with the requirements made by a person appointed by a company to investigate the company's affairs under clause 880</p> <p>Request for the Administration to provide a written response</p>	<p>The Administration to take action as in paragraph 2(j) of the minutes</p>
032832-033440	Administration SALA3	<p><u>Clause 881 -- Court may inquire into failure of officer or agent to attend before appointed person etc.</u></p> <p><u>Clause 882 -- Report by appointed person</u></p> <p><u>Schedule 10 -- Transitional and Saving Arrangements (for Part 19)</u></p> <p><i>Sections 134 - 140</i></p> <p>The Administration's briefing on the above clauses</p> <p>SALA3's enquiry about the transitional arrangements for the protection of informers and preservation of secrecy of investigations/enquiries in progress and the Administration's response</p>	
<p><u>Clause-by-clause examination of the Bill</u> <u>Part 20 of the Bill (LC Paper No. CB(1)1052/11-12(01))</u></p>			
033441-034508	Administration Chairman Mr Ronny TONG	<p><u>Clause 883 -- Offence for false statement</u></p> <p><u>Clause 884 -- Offence for improper use of "Limited" or "有限公司" etc.</u></p> <p><u>Clause 885 -- Court may order inspection or production of documents if offence suspected</u></p> <p><u>Clause 886 -- Enforcement of requirements by order of Court</u></p> <p><u>Clause 887 -- Registrar may give notice to suspected offender about not instituting proceedings under certain conditions</u></p> <p><u>Clause 888 -- Limitation on commencement of proceedings</u></p> <p>The Administration's briefing on the above clauses</p> <p>Mr Ronny TONG's enquiry on the time limits for commencement of proceedings (clause 888) and the Administration's</p>	

Time marker	Speaker	Subject(s)	Action required
		response	
034509-034944	Administration Mr WONG Ting-kwong Mr Ronny TONG SALA3	<p><u>Clause 889 -- Application of fines</u></p> <p>Discussion on the clause</p> <p>Mr WONG Ting-kwong seeking clarification on clause 889(1)</p> <p>Mr Ronny TONG's concern on the appropriateness of rewarding a person on whose information or at whose suit a fine was recovered</p> <p>Request for the Administration to review the clause with respect to Mr TONG's concern</p>	The Administration to take action as in paragraph 2(k) of the minutes
034945-035425	Administration	<p><u>Clause 890 -- Interpretation</u></p> <p><u>Clause 891 -- Court may grant company officer etc. relief in proceedings for misconduct</u></p> <p><u>Clause 892 -- Court may grant company officer etc. relief for misconduct on officer's application</u></p> <p><u>Clause 893 -- Costs in action by company etc.</u></p> <p><u>Clause 894 -- Saving as to private prosecution</u></p> <p><u>Clause 895 -- Saving for privileged communication</u></p> <p>Briefing on the above clauses</p>	
035426-035715	Administration SALA3 Chairman	<p><u>Clause 896 -- Paperless holding and transfer of shares and debentures</u></p> <p>Discussion on the clause</p> <p>SALA3's advice that the proposals relating to paperless holding and transfer of shares and debentures contained in Schedule 8 (which was referred to in clause 896) were subject to change pending the introduction of a separate bill on the scripless securities market</p> <p>Request for the Administration to consider removing clause 896 and Schedule 8</p>	The Administration to take action as in paragraph 2(1) of the minutes

Time marker	Speaker	Subject(s)	Action required
035716-040439	Administration SALA3	<p><u>Clause 897 -- Power to make regulations</u>  <u>Clause 898 -- Supplementary provisions for regulations made under this Ordinance</u>  <u>Clause 899 -- Financial Secretary and Registrar may amend Schedules</u>  <u>Schedule 7 -- Offences in respect of which Proceedings not Instituted under Certain Conditions (sections 1 to 5)</u>  <u>Schedule 8 – Amendments relating to Paperless Holding and Transfer of Shares and Debentures (Sections 1 to 14)</u>  <u>Schedule 10 -- Transitional and Saving Provisions (Section 141)</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views on Part 20 of CB (LC Paper No. CB(1)339/11-12(01))</p> <p>SALA3's suggestion for the Administration to consider amending the heading before section 141 of Schedule 10 from "Other Transitional and Saving Arrangements" to "Transitional and Saving Arrangements for Part 20", as section 141 was related to Part 20</p>	The Administration to take action as in paragraph 2(m) of the minutes
040440-040452	Chairman	Date of next meeting	