

立法會
Legislative Council

LC Paper No. CB(1)2661/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the thirtieth meeting held on
Friday, 24 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 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 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
- Members absent** : Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, 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)

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

Ms Phyllis MCKENNA
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Ms Kitty TSUI
Senior Solicitor (Company Law Reform)
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

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I Meeting with the Administration

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)1052/11-12(03) -- Comparison Table for Part 21 -- Consequential Amendments, and Transitional and Saving Provisions
- LC Paper No. CB(1)1052/11-12(04) -- Comparison Table for Part 1 -- Preliminary
- LC Paper No. CB(1)1110/11-12(01) -- Administration's paper on alignment of penalties for offences under the Companies Bill
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 1, Part 21 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)1671/10-11(03) -- Administration's paper on

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- Part 1, Part 3 and Part 17 of the Companies Bill
- LC Paper No. CB(1)1879/10-11(02) -- Administration's response to issues raised by members at the meeting on 29 March 2011 in relation to Parts 1, 3 and 16
- LC Paper No. CB(1)2132/10-11(02) -- Administration's response to issues raised by members at the meeting on 18 April 2011 in relation to Part 1
- LC Paper No. CB(1)2636/10-11(01) -- Administration's response to issues raised by members at the meeting on 13 May 2011 in relation to the formulation of "responsible person" under Part 1
- LC Paper No. CB(1)2636/10-11(03) -- Administration's paper on Part 20 and Part 21 of the Companies Bill)

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 909 -- Continuity of law

- (a) to review the drafting of clauses 909(4) and 909(5) to ensure consistency in the reference to "times, circumstances and/or purposes in relation to" in both clauses;

Clause 2 -- Interpretation

- (b) to review the definition of "financial year" such that it would be clear for both new and existing companies;
- (c) to consider, for the sake of clarity, referring to clauses 553(1), 554(1) and 568(1) respectively (instead of clauses 553, 554 and

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568) in the definitions of "ordinary resolution", "special resolution" and "special notice";

- (d) to review the drafting of the definition of "written resolution" to refer to the definition given in Subdivision 2 of Division 1 of Part 12 of the Companies Bill ("CB");

Alignment of penalties for offences under the Companies Bill

- (e) to provide information about --
 - (i) the rationale behind the trend of a decreasing daily default fine (as a percentage of the corresponding maximum fine level) as the fine level increases;
 - (ii) how the daily default fines under other ordinances were set;
- (f) to re-categorize the offences listed out in the Annex to LC Paper No. CB(1)1110/11-12(01) according to the levels of fine (instead of the order of the clauses) to facilitate members' comparison and consideration; and
- (g) to review the levels of fine for offences of which the impact were not significant but the fine might be a financial burden to the small and medium sized enterprises.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 2 March 2012 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 10:24 am.

Bills Committee on Companies Bill

**Proceedings of the thirtieth meeting
on Friday, 24 February 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000623-000811	Chairman	Opening remarks	
<u>Clause-by-clause examination of the Bill</u> <u>Part 21 of the Bill (LC Paper No. CB(1)1052/11-12(03))</u>			
000812-001716	Administration Assistant Legal Adviser 2 ("ALA2") Chairman	<u>Clause 900 -- Amendments to Ordinances</u> <u>Clause 901 -- Transitional and saving provisions</u> <u>Clause 902 -- Extended effect of saving provision</u> <u>Clause 903 -- offence for false statement</u> <u>Clause 904 -- Limitation on commencement of proceedings</u> <u>Clause 905 -- Application of fines</u> <u>Clause 906 -- Saving as to private prosecution</u> <u>Clause 907 -- Saving for privileged communication</u> <u>Clause 908 -- This Part etc. not to derogate from section 23 of Cap. 1</u> <u>Clause 909 -- Continuity of law</u> Briefing on the above clauses ALA2's suggestion for the Administration to review the drafting of clauses 909(4) and 909(5) to ensure consistency in the reference to "times, circumstances and/or purposes in relation to" in both clauses	The Administration to take action as in paragraph 2(a) of the minutes
<u>Clause-by-clause examination of the Bill</u> <u>Part 1 of the Bill (LC Paper No. CB(1)1052/11-12(04))</u>			
001717-005347	Administration Chairman Senior Assistant Legal Adviser	<u>Clause 1 -- Short title and commencement</u> <u>Clause 2 -- Interpretation</u>	

Time marker	Speaker	Subject(s)	Action required
	3 ("SALA3") ALA2	<p>The Administration's briefing on the above clauses and its response to deputations' views on clause 2 (LC Paper No. CB(1)339/11-12(01))</p> <p>Discussion on the definitions of "financial year", "ordinary resolution", "special resolution", "special notice" and "written resolution"</p> <p>Request for the Administration to --</p> <p>(a) review the definition of "financial year" such that it would be clear for both new and existing companies;</p> <p>(b) consider, for the sake of clarity, referring to clauses 553(1), 554(1) and 568(1) respectively (instead of clauses 553, 554 and 568) in the definitions of "ordinary resolution", "special resolution" and "special notice"; and</p> <p>(c) review the definition of "written resolution" to refer to the definition given in Subdivision 2 of Division 1 of Part 12 of the Companies Bill ("CB")</p> <p>ALA2's suggestion that "section 1 of Schedule 9" in the definition of "predecessor ordinance" should be amended to "section 2 of Schedule 9"</p>	<p>The Administration to take action as in paragraphs 2(b) to 2(d) of the minutes</p>
005348-005527	Administration	<p><u>Clause 3 -- Responsible person</u></p> <p>The Administration's briefing on the clause and its response to deputations' views on the clause (LC Paper No. CB(1)339/11-12(01))</p> <p>The Administration's advice that, to address members' concerns, it would move a Committee Stage amendment ("CSA") to delete the limb "fails to take all reasonable steps to prevent" from the formulation of "responsible person"</p>	
005528-	Administration	<p><u>Clause 4 -- Certified translation</u></p>	

Time marker	Speaker	Subject(s)	Action required
005919		<p><u>Clause 5 -- Dormant company</u></p> <p>The Administration's briefing on the above clauses and its response to deputations' views on the clauses (LC Paper No. CB(1)339/11-12(01))</p> <p>The Administration's advice that a CSA would be introduced to delete clause 5(7)(f)</p>	
005920-010108	Administration	<p><u>Clause 6 -- Limited company</u> <u>Clause 7 -- Company limited by shares</u> <u>Clause 8 -- Company limited by guarantee</u> <u>Clause 9 -- Unlimited company</u> <u>Clause 10 -- Private company</u></p> <p>Briefing on the above clauses</p>	
010109-010754	Administration Mr Andrew LEUNG SALA3 Chairman	<p><u>Clause 11 -- Public company</u> <u>Clause 12 -- Holding company</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on clause 11 on the coverage of public company for the purposes of CB, and the definition of "public company" under the United Kingdom Companies Act 2006</p>	
010755-011545	Administration	<p><u>Clause 13 -- Provisions supplementary to section 12</u> <u>Clause 14 -- Subsidiary</u> <u>Clause 15 -- Parent undertaking, parent company and subsidiary undertaking</u> <u>Clause 16 -- Application to existing company</u> <u>Clause 17 -- Application to unlimited company registered in pursuance of former Companies Ordinance as limited company</u> <u>Clause 18 -- Application to company registered, but not formed, under former Companies Ordinance</u> <u>Schedule 1 -- Parent Undertakings and Subsidiary Undertakings</u></p>	

Time marker	Speaker	Subject(s)	Action required
		Briefing on the above clauses and the Administration's response to deputations' views on clause 13 (LC Paper No. CB(1)339/11-12(01))	
<u>Discussion on alignment of penalties for offences under the Companies Bill (LC Paper No. CB(1)1110/11-12(01))</u>			
011546-012934	Administration	Briefing on the basis and rationale of the Administration's proposals for alignment of the penalties for offences under CB	
012935-013654	Chairman Mr WONG Ting-kwong Administration	Discussion on the Administration's proposals for alignment of the penalties The Chairman's concerns on -- (a) the rationale behind the trend of a decreasing daily default fine (as a percentage of the corresponding maximum fine level) as the fine level increases; and (b) whether the Administration had made reference to other ordinances in setting the daily default fines Request for the Administration to provide a written response to the above concerns	The Administration to take action as in paragraph 2(e) of the minutes
013655-014806	Administration	Briefing on examples of offences punishable by different levels of fine (Levels 3 to 6) (Annex to LC Paper No. CB(1)1110/11-12(01))	
014807-015403	Chairman SALA3 Administration	Discussion on the factors in considering the levels of fine, i.e. the impact of the offence, the size of the company committing the offence, the frequency of occurrence of the offence, etc. Request for the Administration to -- (a) re-categorize the offences listed out in the Annex to LC Paper No. CB(1) 1110/11-12(01) according to the levels of fine (instead of in the order of the clauses) to facilitate members'	The Administration to take action as in paragraphs 2(f) and 2(g) of the minutes

Time marker	Speaker	Subject(s)	Action required
		comparison and consideration; and (b) review the levels of fine for offences of which the impact were not significant but the fines might be a financial burden to the small and medium sized enterprises	
015404- 015413	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
28 September 2012