

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2662/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/10/2

**Bills Committee on Companies Bill**

**Minutes of the thirty-first meeting held on  
Friday, 2 March 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  
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

**Members absent** : Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
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 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

Mrs Christine Frances SIT  
Senior Solicitor (Company Law Reform)  
Companies Registry

Ms Kitty TSUI  
Senior 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**

Matters arising from previous meetings

- (LC Paper No. CB(1)1184/11-12(01) -- Administration's response to issues raised by members at the meetings on 18 and 25 November 2011 in relation to Part 9
- LC Paper No. CB(1)1184/11-12(02) -- Administration's response to issues raised by members at the meeting on 2 December 2011 in relation to Part 10
- LC Paper No. CB(1)1184/11-12(03) -- Administration's response to issues raised by members at the meetings on 3 and 10 February 2012 in relation to Part 13
- LC Paper No. CB(1)1184/11-12(04) -- Administration's response to issues raised by members at the meetings on 13 January and 3 February 2012 in relation to Part 15
- LC Paper No. CB(1)1184/11-12(05) -- Administration's response to issues raised by members at the meeting on 10 February 2012 in relation to Part 17
- LC Paper No. CB(1)1184/11-12(06) -- Administration's paper on subsidiary legislation to be made under the Companies Bill before its commencement
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 9, Part 10, Part 13, Part 15, Part 17 and Schedules 1 to 10)
- LC Paper No. CB(1)339/11-12(01) -- Summary of views of

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deputations made at the meeting on 9 April 2011 and the Administration's response)

Other relevant papers

(File Ref: CBT/17/2C

LC Paper No. LS26/10-11

LC Paper No. CB(1)1406/10-11(01)

-- Legislative Council Brief  
-- Legal Service Division Report  
-- Paper on Companies Bill prepared by the Legislative Council Secretariat (Background brief))

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

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

Clause 399 -- Offences relating to contents of auditor's report

- (a) to review clause 399 and the proposed Committee Stage amendments ("CSAs"), drawing reference to relevant overseas practices in determining the different levels of liabilities for directors, officers and auditors, etc., in respect of non-compliance with the requirements in company law;
- (b) to consult accountants' and listed companies' organizations as well as other concerned parties on clause 399 and the proposed CSAs;

Clause 409 -- Cessation of office

- (c) to consider specifying in clause 409 a notice period of 14 days and the requirement of a written notice;

Clause 454 -- Director's right to protest against removal

- (d) to review the drafting of clause 454(6) so as to address the concern about possible controversies that might arise from the difference in the wording of clause 454(6) and section 52A(2) of the High Court Ordinance (Cap. 4);

Action

Unlimited companies incorporated in Hong Kong

- (e) to provide the names of the existing unlimited companies incorporated in Hong Kong; and

Subsidiary legislation to be made under the Companies Bill before its commencement

- (f) to provide written information about the subsidiary legislation that should be made before the commencement of the Bill could be fully commenced (under clauses 32, 194, 203, 269 and 442).

3. During the discussion on the Administration's follow-up action on clause 452, Dr Philip WONG expressed concern about the difficulties encountered by listed companies in appointing the required number of independent non-executive directors to the company's board of directors. The Administration advised that such requirements were imposed on listed companies through the Listing Rules of the Hong Kong Exchanges and Clearing Limited instead of the provisions in the Companies Bill. The Chairman advised that the issue be referred to the Panel on Financial Affairs for follow-up.

*(Post-meeting note: The Clerk referred the matter to the Panel on Financial Affairs. The Administration's response was circulated to members of the Panel and the Bills Committee vide LC Paper No. CB(1)1585/11-12 on 16 April 2012.)*

**II Any other business**

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 16 March 2012 at 8:30 am to meet with the Administration.

5. There being no other business, the meeting ended at 11:45 am.

Council Business Division 1  
Legislative Council Secretariat  
28 September 2012

**Bills Committee on Companies Bill**

**Proceedings of the thirty-first meeting  
on Friday, 2 March 2012, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000333-000612	Chairman	Opening remarks	
<u>Discussion on follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies Bill (LC Paper No. CB(1)1184/11-12(01))</u>			
000613-001530	Administration	Briefing on LC Paper No. CB(1)1184/11-12(01) (paragraphs 1 to 14) (Division 2 of Part 9, clauses 363, 369, 396 and 399)	
001531-005746	Chairman Administration Mr Andrew LEUNG Mr Jeffrey LAM Dr Philip WONG Senior Assistant Legal Adviser 3 ("SALA3")	<p>Discussion on clause 399 (Offences relating to contents of auditor's report)</p> <p>The Administration's advice that it would move Committee Stage amendments ("CSAs") to clause 399 to remove the references to officer, partner, employee and agent of the auditor</p> <p>The Chairman's declaration of interest that he was the LegCo Member returned from the accounting constituency, and his other interests as disclosed in the LegCo Register of Members' Interests</p> <p>The Chairman's view that clause 399 should exclude junior persons involved in the concerned audit because they would not have control over the final audit report, and that the auditor who signed the audit report should be subject to criminal offence under clause 399</p> <p>Mr Andrew LEUNG's declaration of interest that he was director and investor of a number of companies as disclosed in the LegCo Register of Members' Interests</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>Mr Andrew LEUNG's view that it was necessary to enhance the responsibility of auditors for the integrity of companies' financial reports through introducing criminal sanctions under the Companies Bill ("CB"), and this would be fair to directors and responsible persons of companies as they would be subject to criminal sanction for breaches of various requirements under CB</p> <p>Mr Jeffrey LAM's views that --</p> <p>(a) corporate governance was important for the healthy development of businesses and directors, officers and auditors had different but important roles to play in maintaining good corporate governance for companies; and</p> <p>(b) the Administration should consider the practices of overseas jurisdictions in determining different levels of liabilities for directors, officers and auditors, etc., for breaches of requirements under company law</p> <p>Dr Philip WONG's views that --</p> <p>(a) the Administration should be prudent in introducing changes to the existing law because such changes might be ineffective in solving existing problems but create new problems; and</p> <p>(b) the Administration should consult accountants' and listed companies' organizations on clause 399 and any proposed CSAs</p> <p>SALA3's advice that under clause 399, criminal sanctions would only be imposed against the person who "knowingly or recklessly" caused the required statements to be omitted from the auditor's report, and the subclause (2) set out the range of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>persons who could be caught The Administration's advice that --</p> <p>(a) the criminal sanction under clause 399 was necessary for the enforcement of auditors' duty for making proper and effective audits;</p> <p>(b) the prosecution threshold for the clause was high and would not catch omissions caused by negligence; and</p> <p>(c) the Administration would consider members' views on the clause</p> <p>Request for the Administration to --</p> <p>(a) review the clause and the proposed CSAs, with reference to relevant overseas practices in determining the different levels of liabilities for directors, officers and auditors, etc.; and</p> <p>(b) consult accountants' and listed companies' organizations as well as other concerned parties on clause 399 and the proposed CSAs</p>	<p>The Administration to take action as in paragraphs 2(a) and 2(b) of the minutes</p>
005747-010122	Administration	Briefing on paragraphs 15 to 18 of the paper (clauses 403, 404 and 406)	
010123-010402	Administration Dr Philip WONG SALA3 Chairman	<p>Briefing on paragraph 19 of the paper (clause 409 -- Cessation of office)</p> <p>Dr Philip Wong's enquiry on the format in which the cessation notice from the auditor was to be given</p> <p>SALA3's view that the proposed period of 7 days for giving the notice might be too short</p> <p>Request for the Administration to consider specifying in the clause a notice period of 14 days and the requirement of a written notice</p>	<p>The Administration to take action as in paragraph 2(c) of the minutes</p>
010403-	Administration	Briefing on paragraphs 20 and 21 of the	

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010701		paper (clauses 413(5) and 420(2))	
010702-011140	Administration Mr Andrew LEUNG	<p>The Administration's briefing on paragraph 22 of the paper (clause 436 -- Additional copy of reports etc. to be sent by company)</p> <p>Mr Andrew LEUNG's view that the Administration should consider extending the period of 7 days specified in clause 436(3)(a) to 14 days</p>	
011141-011819	Administration	Briefing on paragraphs 23 to 35 of and the Annex to the paper	
<i>Break (011820- 013239)</i>			
<u>Discussion on follow-up actions for the meeting held on 2 December 2011 in relation to Part 10 of the Companies Bill (LC Paper No. CB(1)1184/11-12(02))</u>			
013240-013400	Administration Assistant Legal Adviser 2 ("ALA2")	<p>The Administration's briefing on paragraphs 1 to 2 of the paper (clause 449 -- Direction requiring company to appoint director)</p> <p>ALA2's advice that the Administration should make the same textual amendment as proposed for clause 449 to other provisions in CB as appropriate</p>	
013401-013847	Administration Chairman Dr Philip WONG	<p>The Administration's briefing on paragraph 3 of the paper (clauses 449 and 467)</p> <p>The Chairman and Dr Philip WONG seeking clarification on the proposed period (not less than one month or more than three months after the date on which the Registrar of Companies' direction is given) for complying with the Registrar's instruction for company to appoint director and company secretary</p>	
013848-015135	Administration Dr Philip WONG Chairman ALA2	<p>The Administration's briefing on paragraph 4 of and Annex A to the paper (clause 452 -- Validity of acts of director)</p> <p>Dr Philip WONG's concern about difficulties encountered by listed</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>companies in appointing the required on the number of independent non-executive directors to the company's board of directors</p> <p>The Administration's response that the requirements were imposed on listed companies through the Listing Rules of the Hong Kong Exchanges and Clearing Limited instead of the provisions in CB</p> <p>The Chairman's advice that the issue raised by Dr Philip WONG be referred to the Panel on Financial Affairs for follow-up</p>	<p>The Clerk to refer the matter to the Panel on Financial Affairs</p>
015136-015653	Administration	Briefing on paragraphs 5 to 10 of the paper (clauses 453 and 454(5))	
015654-021024	Administration ALA2 Mr Andrew LEUNG SALA3	<p>The Administration's briefing on paragraphs 11 to 12 of the paper (clauses 454(6) -- Director's right to protest against removal)</p> <p>Discussion on the drafting of clause 454(6) and the principle of section 52A(2) of the High Court Ordinance (Cap. 4) (the Court of Appeal or the Court of First Instance may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that it is in the interests of justice to do so)</p> <p>Concern about the difference in the wording of clause 454(6) and section 52A(2) of the High Court Ordinance giving rise to controversies in legal proceedings</p> <p>Request for the Administration to review the drafting of clause 454(6)</p>	<p>The Administration to take action as in paragraph 2(d) of the minutes</p>
021025-023454	Administration Mr Andrew LEUNG SALA3	The Administration's briefing on paragraphs 13 to 15 of and Annex B to the paper (clauses 455(5), 468(5) and 456(2))	

Time marker	Speaker	Subject(s)	Action required
		<p>Discussion on clause 456(2) (Duty to exercise reasonable care, skill and diligence)</p> <p>Mr Andrew LEUNG's concern that the standards of directors' duty of care under clauses 456(2)(a) and 456(2)(b) could be onerous for directors of small companies who might not have high academic qualifications or appropriate professional training</p> <p>The Administration's response that the court would take into account --</p> <p>(a) the functions carried out by the relevant director in the company (the objective test under clause 456(2)(a)); and</p> <p>(b) the director's own knowledge and skills (the subjective test under clause 456(2)(b)) which largely reflected the position under the common law</p>	
023455-023923	Administration	Briefing on paragraphs 16 to 22 of the paper (clauses 456(4) and 464, and section 83(4) of Schedule 10)	
<p><u>Discussion on follow-up actions for the meetings held on 3 and 10 February 2012 in relation to Part 13 of the Companies Bill (LC Paper No. CB(1)1184/11-12(03))</u></p>			
023924-024417	Administration Mr Andrew LEUNG	<p>The Administration's briefing on the paper</p> <p>Mr Andrew LEUNG's support of the Administration's proposal to allow companies with floating charges to amalgamate on the condition that all the holders of the floating charges agreed to the amalgamation under clauses 669 and 670 (paragraph 4 of the paper)</p>	
<p><u>Discussion on follow-up actions for the meetings held on 13 January and 3 February 2012 in relation to Part 15 of the Companies Bill (LC Paper No. CB(1)1184/11-12(04))</u></p>			

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
024418-024938	Administration SALA3 Chairman	The Administration's briefing on paragraphs 1 to 3 of the paper (statistics on companies struck off and clause 738 on application for deregistration)  Discussion on the scenario where a company which applied for deregistration held shares in a non-Hong Kong company which held immovable property in Hong Kong	
024939-025157	Administration	Briefing on paragraphs 4 to 6 of the paper (clauses 744 and 746)	
<u>Discussion on follow-up actions for the meeting held on 10 February 2012 in relation to Part 17 of the Companies Bill (LC Paper No. CB(1)1184/11-12(05))</u>			
025158-025430	Administration SALA3 Chairman	The Administration's briefing on the paper providing information on the number of unlimited companies incorporated in Hong Kong  Request for the Administration to provide the names of such unlimited companies	The Administration to take action as in paragraph 2(e) of the minutes
<u>Subsidiary legislation to be made under the Companies Bill before its commencement (LC Paper No. CB(1)1184/11-12(06))</u>			
025431-031514	Administration Chairman	The Administration's briefing on the paper and other subsidiary legislation that should be made after the commencement of CB  Request for the Administration to provide written information on other subsidiary legislation that should be made before CB could be fully commenced (under clauses 32, 194, 203, 269 and 442)	The Administration to take action as in paragraph 2(f) of the minutes
031515-031519	Chairman	Date of next meeting	