

立法會
Legislative Council

LC Paper No. CB(1)7/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the thirty-second meeting held on
Friday, 16 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
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, 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
Hon WONG Ting-kwong, BBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Albert HO Chun-yan
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 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 Rita HO
Registry Solicitor
Companies Registry

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

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

Ms Polly YIP
Assistant Principal Solicitor
Companies Registry

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

Ms Margaret CHAN
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

Action

I Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(1)1277/11-12(01) -- Administration's response to issues raised by members at the meetings on 16 December 2011 and 6 January 2012 in relation to Part 12

LC Paper No. CB(1)1277/11-12(02) -- Administration's response to issues raised by members at the meeting on 10 February 2012 in relation to Part 16

LC Paper No. CB(1)1277/11-12(03) -- Administration's response to issues raised by members at the meeting on 10 February 2012 in relation to Part 18

Action

- LC Paper No. CB(1)1277/11-12(04) -- Administration's response to issues raised by members at the meeting on 17 February 2012 in relation to Part 19 and Part 20
- LC Paper No. CB(1)1277/11-12(05) -- Administration's response to issues raised by members at the meeting on 24 February 2012 in relation to alignment of penalties for offences under the Companies Bill
- LC Paper No. CB(1)1295/11-12(01) -- Administration's response to issues raised by members at the meeting on 13 January 2012 in relation to Part 14
- LC Paper No. CB(3)412/10-11 -- The Bill (Part 12, Part 14, Part 16, Part 18, Part 19, Part 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
- LC Paper No. LS26/10-11 -- Legislative Council Brief
- LC Paper No. CB(1)1406/10-11(01) -- 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))

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

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

Action

Clause 555 -- Directors' power to call general meeting

Clause 556 -- Members' power to request directors to call general meeting

Clause 646 -- Form of company records

(a) to consider amending "董事" in the above clauses to "董事局";

Clause 569 -- Accidental failure to give notice of meeting or resolution

Clause 606 -- Company's duty to circulate resolution for annual general meeting

(b) to consider amending the term "accidental failure (因意外而沒有(發出通知))" in clause 569 to "accidental omission (意外遺漏)" (used in clause 606);

Clause 544 -- Application not to circulate accompanying statement

Clause 573 -- Application not to circulate members' statement

(c) to review the drafting of clauses 544(1) and 573(1) to expressly refer to "abuse or defamation";

Clause 541 -- Members' power to request circulation of written resolution

Clause 570 -- Members' power to request circulation of statement

(d) to consider specifying in clauses 541 and 570 that a member could only request to circulate one statement;

Clause 574 -- Meeting at 2 or more places

(e) to review clause 574 such that the provisions would not impose restrictions on the means for conducting the meeting and be flexible enough to cater for different operational needs of a meeting;

Clause 579 -- Votes of joint holders of shares

(f) to consider replacing "senior holder" in clause 579 with "the more senior holder" to avoid misunderstanding;

Action

Alignment of penalties for offences under the Companies Bill

- (g) to provide information about --
 - (i) the mechanism for the review of the amount of fines corresponding to the different fine levels;
 - (ii) the penalties imposed upon conviction for offences punishable by different daily default fines under the Companies Ordinance ("CO");
 - (iii) the Companies Registry's general policies in taking out prosecution for offences under CO;
- (h) to consider removing the daily default fine for minor regulatory offences subject to a Level 3 fine ;

Clause 728 -- Interpretation

- (i) to align the definitions of "record" in clause 728 and clause 826 (Part 19); and

Clause 729 -- Court may order inspection of records

- (j) to review clause 729 with a view to aligning it with the proposed amendment to clause 730.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 23 March 2012 at 9:30 am to meet with deputations and the Administration.

4. There being no other business, the meeting ended at 12:39 pm.

Council Business Division 1
Legislative Council Secretariat
11 October 2012

Bills Committee on Companies Bill

**Proceedings of the thirty-second meeting
on Friday, 16 March 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000809-001004	Chairman	Opening remarks	
<u>Discussion on follow-up actions for the meetings held on 16 December 2011 and 6 January 2012 in relation to Part 12 of the Companies Bill (LC Paper No. CB(1)1277/11-12(01))</u>			
001005-001951	Administration Deputy Chairman Ms Audrey EU Assistant Legal Adviser 2 ("ALA2")	<p>The Administration's briefing on paragraphs 1 to 3 of the paper (clause 539 -- Power to propose written resolution, and clause 542 -- Company's duty to circulate written resolution proposed by members)</p> <p>The Deputy Chairman seeking clarification on clause 539</p> <p>Ms Audrey EU's enquiry on whether clause 539 in respect of the requisite percentage for the proposal and circulation of a written resolution (to be raised from 2.5% to 5%) or the articles of a company would prevail</p> <p>The Administration's response with reference to clause 551 -- Relationship between this Subdivision (on written resolution) and provisions of company's articles</p> <p>ALA2's comments that clause 539 (2) allowed a company to specify a lower percentage than 5% as provided in the company's articles</p> <p>The Administration's reply in response ALA2's enquiry that the requisite percentage of 2.5% provided in clause 605(2)(a) for proposing a resolution in an annual general meeting would remain</p>	

Time marker	Speaker	Subject(s)	Action required
		unchanged	
001952-002325	Administration Ms Audrey EU	<p>The Administration's briefing on paragraphs 4 to 5 of the paper (clause 544 -- Application not to circulate accompanying statement)</p> <p>Ms Audrey EU seeking clarification on the meaning of "company" and "another person" in clause 544(1)</p>	
002326-002838	Administration	Briefing on paragraphs 6 to 9 of the paper (clauses 547, 552, 554 and Subdivision 4)	
002839-003210	Administration Ms Miriam LAU Senior Assistant Legal Adviser 3 ("SALA3")	<p>The Administration's briefing on paragraph 10 of the paper (clauses 555, 556 and 646)</p> <p>Ms Miriam LAU's and SALA3's concern that the term "董事" (vis-à-vis "directors") could refer to the singular</p> <p>Request for the Administration to consider amending "董事" in clauses 555, 556 and 646 to "董事局"</p>	he Administration to take action as in paragraph 2(a) of the minutes
003211-003428	Administration Ms Audrey EU	<p>The Administration's briefing on paragraphs 11 to 12 of the paper (clause 561 – Notice required of general meeting)</p> <p>Ms Audrey EU seeking clarification on the clause</p>	
003429-004539	Administration SALA3 Mr WONG Ting-kwong Ms Audrey EU Ms Miriam LAU	<p>The Administration's briefing on paragraphs 13 to 16 of the paper (clause 569 -- Accidental failure to give notice of meeting or resolution, and clause 606 -- Company's duty to circulate resolution for annual general meeting)</p> <p>Mr WONG Ting-kwong's enquiry on the party responsible for adducing evidence for an "accidental failure" in giving a notice of meeting and the Administration's response</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Members' view that the term "accidental omission (意外遺漏)" in clause 606 was more appropriate than "accidental failure (因意外而沒有(發出通知))" in clause 569</p> <p>Request for the Administration to align the use of words as suggested by members in clauses 569 and 606</p>	<p>The Administration to take action as in paragraph 2(b) of the minutes</p>
004540-011425	<p>Administration Ms Miriam LAU Ms Audrey EU SALA3</p>	<p>The Administration's briefing on paragraphs 17 and 18 of the paper (clause 570 -- Members' power to request circulation of statement, and clause 605 -- Members' power to request circulation of resolution for annual general meeting)</p> <p>Discussion on clause 570</p> <p>Ms Miriam LAU's enquiry on the reason for setting a limit on the number of words (not more than 1 000) in the statement for circulation and the Administration's response</p> <p>Discussion on whether a company should be exempted from liability for the content of the statement which a member requested for circulation</p> <p>The Administration's response that according to clauses 544 and 573, a company was not required to circulate a statement under clause 541(2) or 571 if, on an application by the company or another person who claimed to be aggrieved, the Court was satisfied that the rights given by clause 541(2) or 571 were being abused</p> <p>Members' views that --</p> <p>(a) the evidential threshold for "abuse" would be higher than that for "defamation", hence defeating the purpose of clauses 541 and 570; therefore, the Administration should</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>review the drafting of clauses 544(1) and 573(1) to expressly refer to "abuse or defamation"; and</p> <p>(b) it should be specified in clauses 541 and 570 that a member could only request to circulate one statement</p> <p>Request for the Administration to consider the above views</p>	<p>The Administration to take action as in paragraphs 2(c) and 2(d) of the minutes</p>
011426-012317	<p>Administration SALA3 Ms Miriam LAU ALA2</p>	<p>The Administration's briefing on paragraphs 19 to 21 of the paper (clause 574 -- Meeting at 2 or more places) and its advice that it a Committee Stage amendment would be proposed to replace the word "audio-visual" by "electronic means" or "technology" in the clause</p> <p>SALA3's view that the drafting of the clause should seek to achieve its objective (i.e. to enable the members of the company to exercise their right to speak and vote at a general meeting), be technology neutral and should not impose restriction on the means for conducting the meeting</p> <p>Ms Miriam LAU's view that live visual images might not be essential for a general meeting</p> <p>ALA2's view that the Administration should take into consideration the possible need for verification of identities of participants and for members of the meeting to see the show of hands when they voted on a proposal</p> <p>The Chairman's view that the requirements under clause 574 should not be onerous for small companies with limited resources</p> <p>Request for the Administration to consider the views above and review the clause</p>	<p>The Administration to take action as in paragraph 2(e) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
012318-012607	Administration Ms Audrey EU	<p>The Administration's briefing on paragraph 22 of the paper (clause 579 -- Votes of joint holders of shares)</p> <p>Ms Audrey EU's concern that the term "the senior holder" in the clause might be taken as referring to a specific holder</p> <p>Request of the Administration to consider replacing "senior holder" with "the more senior holder"</p>	<p>The Administration to take action as in paragraph 2(f) of the minutes</p>
012608-012835	Administration	Briefing on paragraphs 23 to 26 of the paper (clause 581 -- Right to demand poll)	
012836-013502	Administration Chairman SALA3	<p>The Administration's briefing on paragraphs 27 to 29 of the paper (clause 600 -- Requirement to hold annual general meeting)</p> <p>The Chairman's and SALA3's enquiries about the consequence for a company delaying the holding of an annual general meeting without seeking the Court's permission, and the Administration's response</p>	
013503-015445	Administration Chairman ALA2	<p>The Administration's briefing on paragraphs 30 to 32, 38 to 40 of the paper (clauses 608, 617 and 626)</p> <p>The Chairman seeking clarification on the changes proposed by the Administration</p> <p>ALA2's explanation on the changes proposed by the Administration to clauses 608, 617 and 626</p> <p>The Administration's briefing on paragraphs 33 to 35, 36, 37, 41 to 43 of the paper (clauses 609, 618, 632, 639, 619, 620, 646, sections 108 and 110 of Schedule 10)</p>	
<i>Break (015446-021536)</i>			

Time marker	Speaker	Subject(s)	Action required
<u>Discussion on follow-up actions for the meeting held on 10 February 2012 in relation to Part 16 of the Companies Bill (LC Paper No. CB(1)1277/11-12(02))</u>			
021537-022201	Administration Ms Audrey EU Prof Patrick LAU	The Administration's briefing on paragraphs 1 to 7 of the paper (clause 762 -- Interpretation) Ms Audrey EU seeking clarification on the interpretation of "place of business" Prof Patrick LAU's enquiry about the thresholds for the registration of a foreign company in Singapore and the Administration's response	
022202-022521	Administration SALA3	The Administration's briefing on paragraphs 8 to 9 of the paper (clause 765 -- Registration of non-Hong Kong company) SALA3's explanation on the difference between section 333AA of the Companies Ordinance ("CO") (Registrar to keep register of non-Hong Kong companies) and clause 26 (Registrar must keep records of companies) of the Companies Bill ("CB")	
022522-022813	Administration	Briefing on paragraphs 10 to 12 of the paper (clauses 778, 783 and 788)	
<u>Discussion on follow-up actions for the meeting held on 10 February 2012 in relation to Part 18 of the Companies Bill (LC Paper No. CB(1)1277/11-12(03))</u>			
022814-023409	Administration	Briefing on paragraphs 1 to 8 of the paper (clauses 812, 816, 820 and 821; and Divisions 3 & 4)	
023410-023944	Administration SALA3 Chairman	The Administration's briefing on paragraphs 9 and 10 of the paper (clause 823 -- Joint holders of shares or debentures and clause 824 -- Death or bankruptcy of holder of shares) SALA3's remarks on possible disputes among joint holders of shares that might arise from clause 823	

Time marker	Speaker	Subject(s)	Action required
		The Administration's response that clause 823, being a new provision, aimed to facilitate the operation of business	
<u>Discussion on follow-up actions for the meeting held on 17 February 2012 in relation to Parts 19 and 20 of the Companies Bill (LC Paper No. CB(1)1277/11-12(04))</u>			
023945-024746	Administration Ms Audrey EU	The Administration's briefing on paragraphs 1 to 8 of the paper (clauses 826(2)(b) and 829(3)) Ms Audrey EU seeking clarification on the meaning of "same person" in clause 826(2)(b)	
024747-025540	Administration Mr Andrew LEUNG	The Administration's briefing on paragraphs 9 to 15 of the paper (clauses 830(2), 854(1) and 865(1)) Mr Andrew LEUNG seeking clarification on the power of the authorized person in the search of documents under clause 865	
025541-025830	Administration	Briefing on paragraphs 16 to 24 of the paper (clauses 873, 880 and 889)	
025831-030342	Administration SALA3	The Administration's briefing on paragraphs 25 to 29 of the paper (clause 896 and section 141 of Schedule 10) SALA3's enquiry regarding clause 896 (Paperless holding and transfer of shares and debentures) on -- (a) whether the provisions in Schedule 8 to CB relating to paperless holding and transfer of shares and debentures represented all the amendments to CO required for the implementation of a scripless securities market; and (b) seeking confirmation that the provisions in Schedule 8 would not be implemented before all legislative proposals for introducing	

Time marker	Speaker	Subject(s)	Action required
		<p>a scripless securities market were passed and took effect</p> <p>The Administration's response that --</p> <p>(a) it was working with the securities industry on additional legislative proposals needed to implement a scripless market; and</p> <p>(b) the provisions in Schedule 8 would not take effect before all other relevant legislative proposals were ready for implementation</p>	
<p><u>Discussion on follow-up actions for the meeting held on 24 February 2012 in relation to alignment of penalties for offences under the Companies Bill (LC Paper No. CB(1)1277/11-12(05))</u></p>			
<p>030343-035110</p>	<p>Administration Dr Philip WONG Mr Andrew LEUNG Mr WONG Ting-kwong Ms Miriam LAU Mr Jeffrey LAM Chairman</p>	<p>Discussion on the paper</p> <p>Dr Philip WONG's view that the Administration should consider introducing a linkage between the amount of fines and the local economic index, such that the fines would maintain their deterrent effects at all times</p> <p>Mr Andrew LEUNG's concerns that --</p> <p>(a) the imposition of a daily default fine of \$300 for Level 3 fine offences would impose undue burden on some small and medium sized enterprises ("SMEs") especially where a company was not aware of the breach while the daily default fine continued to accumulate; and</p> <p>(b) a daily default fine of \$300 was not proportionate to the severity of the Level 3 fine offences which were mostly minor regulatory offences</p> <p>The Chairman's view that the Administration should include in the prosecution guidelines for the Registrar of Companies that minor offences would not</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>be subjected to prosecution and daily default fines as long as the offenders took remedial actions within a specified period</p> <p>Ms Miriam LAU's request for the Administration to provide information, including statistics and details, of the penalties imposed upon conviction for offences punishable by different daily default fines under CO</p> <p>Mr WONG Ting-kwong's view that the imposition of daily default fines for minor regulatory offences was onerous to SMEs and inexperienced business operators</p> <p>Mr Jeffrey LAM's comments that the maximum fines for offences under CB should be reviewed as they had an impact on the operation costs of businesses</p> <p>Request for the Administration to provide information about --</p> <p>(a) the mechanism for the review of the amount of fines corresponding to the different fine levels;</p> <p>(b) the penalties imposed upon conviction for offences punishable by different daily default fines under CO;</p> <p>(c) the Companies Registry's general policies in taking out prosecution for offences under the CO;</p> <p>and to consider removing the daily default fine for minor regulatory offences subject to a Level 3 fine</p>	<p>The Administration to take action as in paragraphs 2(g) and 2(h) of the minutes</p>
<p><u>Discussion on follow-up actions for the meeting held on 13 January 2012 in relation to Part 14 of the Companies Bill (LC Paper No. CB(1)1295/11-12(01))</u></p>			
035111-040851	Administration ALA2	The Administration's briefing on the paper (Divisions 2, 3 and 5 of Part 14, clauses 713, 717(2), 717(4), 720, 728, 729 and	

Time marker	Speaker	Subject(s)	Action required
		730) ALA2's suggestion that -- (a) the definitions of "record" in clause 728 and clause 826 (Part 19) should be aligned; and (b) clause 729 should be reviewed to tie in with the proposed amendment to clause 730	The Administration to take action as in paragraphs 2(i) and 2(j) of the minutes
040852-040907	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
11 October 2012