

立法會
Legislative Council

LC Paper No. CB(1)2663/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the thirty-fourth meeting held on
Tuesday, 10 April 2012, at 9:00 am
in Conference Room 3 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 Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Albert HO Chun-yan
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Ting-kwong, BBS, 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 CHUNG Wai-tim
Solicitor (Company Law Reform)
Companies Registry

Miss Selina LAU
Senior Government Counsel
Department of Justice

Ms Natalie WONG
Senior Government Counsel
Department of Justice

Mr Stefan LO
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)1295/11-12(02) -- Administration's paper on "Notes" and "Examples" in the Companies Bill
- LC Paper No. CB(1)1490/11-12(01) -- Administration's response to issues raised at the meetings on 2 and 9 December 2011 in relation to Part 11
- LC Paper No. CB(3)412/10-11 -- The Bill
- 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))

The Bills Committee deliberated (Index of proceedings attached at the

Action

Appendix).

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

Amendments in relation to "Examples" and "Notes" in the Companies Bill

Clause 155 (Pre-emption rights in relation to transmission by law)

(a) deleting the "Example" in clause 155;

Clause 175 (Varying class rights) and Clause 183 (Varying class rights)

(b) keeping the "Notes" in clauses 175 and 183 instead of amending them to "Examples";

Clause 205 (Permitted reduction of share capital)

(c) reviewing the drafting of clause 205 to examine whether it should follow section 58(1) of the Companies Ordinance, which did not contain any examples;

Clause 166 (Notice of alteration of share capital)

(d) adding "for registration" to the end of the "Note" in clause 166 to make the drafting consistent with that of other similar clauses;

Clause 231 (General power of company to buy back its own shares)

(e) reviewing the drafting of clause 231 to incorporate the "Note" in the main body of the provision;

Clause 477 – Connected entity

(f) similar to the amendment to be made to clause 477(1)(b), amending "as a couple in an enduring family relationship" in clause 658(1)(a)(ii) to "as a couple in an intimate relationship";

Clause 501 – Exception for leasing goods and land etc.

Action

- (g) reviewing clause 501 to address members' concern about inconsistency between the conditions set out in the clause and the usual practice of many companies offering discounts to staff on the purchase/hiring of goods/services provided by the company to its customers;

Clause 529 – Declaration to directors: procedures

- (h) reviewing clause 529(6) so as to provide flexibility on the requirement for a director's declaration, which was made in the form of a general notice, to be brought up and read at the next director's meeting; and

Clause 535 – Contract with sole member who is also director

- (i) considering extending the time limit from 7 days to 15 days for the terms of a contract to be set out in a written memorandum.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 20 April 2012 at 8:30 am to meet with the Administration.

(Post-meeting note: The meeting on 20 April 2012 was subsequently cancelled and re-scheduled to Monday, 30 April 2012 at 2:30 pm.)

4. There being no other business, the meeting ended at 11:31 am.

Council Business Division 1
Legislative Council Secretariat
28 September 2012

Bills Committee on Companies Bill

**Proceedings of the thirty-fourth meeting
on Tuesday, 10 April 2012, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

| Time marker | Speaker | Subject(s) | Action required |
|--|--|---|-----------------|
| 000117-000358 | Chairman | Opening remarks | |
| 000359-000505 | Mr Jeffrey LAM Administration | <p>Mr Jeffrey LAM's enquiry on the Administration's plan for handling deputations' views on clause 664 (relating to retention of the headcount test for members' schemes) received at the Bills Committee meeting held on 23 March 2012</p> <p>The Administration's advice that it was consolidating and analyzing the views and would revert to the Bills Committee at a later stage</p> | |
| <u>Discussion on "Notes" and "Examples" in the Companies Bill (LC Paper No. CB(1)1295/11-12(02))</u> | | | |
| 000506-002303 | Administration | The Administration's briefing on the paper | |
| 002304-002716 | Mr Andrew LEUNG Assistant Legal Adviser 2 ("ALA2") | <p>Mr Andrew LEUNG sought the Legal Advisers' views on the use of "Notes" and "Examples" in the Companies Bill ("CB") as proposed by the Administration</p> <p>ALA2's views that --</p> <p>(a) the use of "Notes" and "Examples" was not completely new in Hong Kong legislation ;</p> <p>(b) an issue to be considered was whether the contents of the "Notes" or "Examples" provided in CB could serve their intended purposes and would be appropriate and necessary in the circumstances; and</p> <p>(c) members might also wish to consider the additional "Notes" proposed by</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>the Administration as explained in the paper, the conversion of some "Notes" containing examples to "Examples" (which would be given legal effect), and the format of setting out some "Examples" at the foot of a provision thus separating the examples from the main body of a provision (an example of this format was given in paragraph 17 of the Administration's paper)</p> | |
| 002717-003733 | <p>Ir Dr Raymond HO ALA2 Administration</p> | <p>Ir Dr Raymond HO's enquiries on --</p> <p>(a) whether the separation of examples from the main body of the provision was an existing practice in other legislation; and</p> <p>(b) whether there would be difference in legal effect of "Examples" appearing in various formats</p> <p>The Administration's response that --</p> <p>(a) Examples contained in "Notes" had no legal effect;</p> <p>(b) "Examples" set out in a provision irrespective whether they appeared in the main body or at the foot of a provision carried legal effect, as they were construed part of the provision; and</p> <p>(c) the proposal to set out an "Example" at the root of the main body of a provision was to improve the readability of the provision concerned</p> <p>ALA2's elaboration on the Administration's response</p> <p>Ir Dr Raymond HO's view that it would be undesirable to present "Examples" or "Notes" in new formats in CB, as this might cause confusion to readers and set a bad example for other new legislation to</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| | | follow | |
| 003734-004410 | Mr Ronny TONG | <p>Mr Ronny TONG's views that --</p> <p>(a) it was important to make the law comprehensible and readable, and he would support the use of "Notes" and "Examples" in drafting legislation if the above benefit could be achieved;</p> <p>(b) for common law, as opposed to statute law, the provisions should not be written in great details so that they imposed constraints on the court's interpretation of the law; and</p> <p>(c) the use of "Examples" in legislation should be handled with great care as "Examples" would have legal effect, and there might be concerns about complexity of the examples given and whether the examples provided would be exhaustive thus giving rise to disputes in the interpretation of the provisions</p> | |
| 004411-004503 | Administration | <p>The Administration noted that members did not have strong views on the use of "Notes" in CB, and their concerns about the legal effect of "Examples" in CB, and advised that only a few "Examples" were used in CB.</p> | |
| 004504-011008 | Chairman Mr Ronny TONG Administration ALA2 | <p>Discussion on the amendments in relation to "Examples" and "Notes" used in CB (Annexes C to E to the paper LC Paper No. CB(1)1295/11-12(02))</p> <p>Request for the Administration to consider --</p> <p><u>Clause 155 (Pre-emption rights in relation to transmission by law)</u></p> <p>(a) deleting the "Example" in clause 155;</p> <p><u>Clause 175 (Varying class rights) and Clause 183 (Varying class rights)</u></p> <p>(b) keeping the "Notes" in clauses 175 and</p> | <p>The Administration to take action as in paragraphs 2(a) to 2(e) of the minutes</p> |

| Time marker | Speaker | Subject(s) | Action required |
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| | | <p>183 instead of amending them to "Examples";</p> <p><u>Clause 205 (Permitted reduction of share capital)</u></p> <p>(c) reviewing the drafting of clause 205 in the light of section 58(1) of the Companies Ordinance ("CO") to examine whether the drafting should follow section 58(1), which did not contain any examples</p> <p><u>Clause 166 (Notice of alteration of share capital)</u></p> <p>(d) adding "for registration" to the end of the "Note" in clause 166 to make the drafting consistent with that of other similar clauses; and</p> <p><u>Clause 231 (General power of company to buy back its own shares)</u></p> <p>(e) reviewing the drafting of clause 231 to incorporate the "Note" in the main body of the provision</p> | |
| <p><u>Discussion on follow-up actions for the meetings held on 2 and 9 December 2011 in relation to Part 11 of the Companies Bill (LC Paper No. CB(1)1490/11-12(01))</u></p> | | | |
| <p>011009-011339</p> | <p>Administration Chairman</p> | <p>The Administration's briefing on paragraphs 1 to 3 of the paper (clause 477 – Connected entity)</p> <p>The Administration's advice that it would amend "as a couple in an enduring family relationship" in clause 477 (1)(b) to "as a couple in an intimate relationship"</p> <p>The Chairman's request for the Administration to make the same amendment to clause 658(1)(a)(ii)</p> | <p>The Administration to take action as in paragraph 2(f) of the minutes</p> |
| <p>011340-</p> | <p>Administration</p> | <p>Briefing on paragraphs 4 to 7 of the paper</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| 011710 | | (clauses 482, 486 and 509) | |
| 011711-013230 | Administration Mr Andrew LEUNG Chairman | The Administration's briefing on paragraphs 8 to 10 of the paper (Subdivision 2 of Division 2 of Part 11) Discussion on the prohibition for various types of companies in making loans and the differences between the prohibitions under CO and those under CB | |
| 013231-013859 | Administration Mr Andrew LEUNG | The Administration's briefing on paragraphs 11 to 14 of the paper (clauses 496, 497, 500 and 501) Mr Andrew LEUNG's enquiries on director's liabilities for making loans under clause 496 and the Administration's response | |
| 013900-015956 | Administration Mr Andrew LEUNG Chairman Mr Ronny TONG ALA2 Senior Assistant Legal Adviser 3 ("SALA3") | The Administration's briefing on paragraphs 15 to 17 of the paper (clauses 498 and 499) Discussion on compensation for a director's expenditure on defending legal proceedings The Administration's advice that -- (a) indemnity against the liability incurred by a director had to meet the requirements under clause 460 in order to be lawful (Permitted indemnity provision); and (b) under clause 459, a provision in a company's articles or in a contract entered into by a company purporting to exempt a director from any liability in connection with any negligence, breach of duty or breach of trust in relation to the company was void | |
| 015957-020543 | Chairman Administration | The Chairman's announcement that the meeting would be extended for 10 minutes | |

| Time marker | Speaker | Subject(s) | Action required |
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| | Mr Andrew LEUNG | <p>to finish discussion on the paper</p> <p>The Administration's briefing on paragraphs 18 to 20 of the paper (clauses 500 and 501)</p> <p>Discussion on clause 501 (Exception for leasing goods and land etc.)</p> <p>The Chairman's concern that the conditions set out in clause 501 were not consistent with the usual practice of many companies offering discounts to staff on the purchase/hiring of goods/services provided by the company to its customers</p> <p>Request for the Administration to review clause 501 to address the above concern</p> | The Administration to take action as in paragraph 2(g) of the minutes |
| 020544-021011 | Administration Mr Andrew LEUNG | <p>The Administration's briefing on paragraph 21 of the paper (clause 505)</p> <p>Mr Andrew LEUNG's enquiry on the "unanimous consent" of members of a company for affirming a contravening transaction (clause 505(5)) and the Administration's response</p> | |
| 021012-021323 | Administration | Briefing on paragraphs 22 to 26 of the paper (clauses 507, 513, 516 and 518) | |
| 021324-022830 | Administration Mr Andrew LEUNG Chairman Ms Miriam LAU Mr Ronny TONG | <p>The Administration's briefing on paragraphs 27 to 30 of the paper (clause 529)</p> <p>Discussion on the requirement for a director's declaration, if made in the form of a general notice, to be brought up and read at the next director's meeting (clause 529(6))</p> <p>Request for the Administration to review clause 529(6) so as to provide flexibility on the above requirement</p> | The Administration to take action as in paragraph 2(h) of the minutes |
| 022831-023033 | Administration Ms Miriam LAU Mr Andrew LEUNG | The Administration's briefing on paragraph 31 of the paper (clause 535) | |

| Time marker | Speaker | Subject(s) | Action required |
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| | Chairman | Discussion on the time limit for the terms of a contract under clause 535 to be set out in a written memorandum Request for the Administration to consider extending the time limit from 7 days to 15 days | The Administration to take action as in paragraph 2(i) of the minutes |
| 023034-023045 | Chairman | Date of next meeting | |

Council Business Division 1
Legislative Council Secretariat
28 September 2012