

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2665/11-12  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/10/2

**Bills Committee on Companies Bill**

**Minutes of the thirty-eighth meeting held on  
Wednesday, 16 May 2012, at 8:30 am  
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)  
Hon Starry LEE Wai-king, JP (Deputy Chairman)  
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  
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Public officers attending** : **Agenda items I & II**  
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 Ada CHUNG, JP  
Registrar of Companies  
Companies Registry

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 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

Mr Henry CHAN  
Government Counsel  
Department of Justice

**Attendance by invitation : Agenda item I**

Federation of Hong Kong Industries

Mr Willy LIN  
Deputy Chairman

The Hong Kong Electronic Industries Association

Professor K B CHAN  
Honorary Chairman

Hong Kong Institute of Certified Public Accountants

Ms Winnie CHEUNG  
Chief Executive & Registrar

Mr Clement CHAN  
Vice President

**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

Ms Christina SHIU  
Legislative Assistant (1)4

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## I Meeting with deputations and the Administration

### Clause 399 on offences relating to contents of auditor's report and criminal liability of auditors for omission of statements from the report

(LC Paper Nos. --	Submissions	dated
CB(1)1743/11-12(01) and (02))	21 December 2011 and	26 April 2012
	from Hong Kong Institute of Certified Public Accountants	
LC Paper No. CB(1)1866/11-12(01) --	Submission	dated
	11 May 2012 from The Chamber of Hong Kong Listed Companies	
LC Paper No. CB(1)1866/11-12(02) --	Submission	dated
	11 May 2012 from the Securities and Futures Commission	
LC Paper No. CB(1)1898/11-12(01) --	Submission dated 15 May 2012 from Federation of Hong Kong Industries	
LC Paper No. CB(1)1898/11-12(02) --	Submission dated 16 May 2012 from The Hong Kong Electronic Industries Association)	

The Bills Committee received and exchanged views with the deputations and exchanged views with them and the Administration (Index of proceedings attached at the **Appendix**).

- Admin 2. The Administration was requested to take the following actions --
- (a) to provide written responses to deputations' submissions and views expressed by members and deputations at the meeting, and to review clause 399 taking into account of these views; and
  - (b) to provide information on the provisions in the 2006 Companies Act of the United Kingdom ("UK") relating to civil and criminal liabilities of auditors, including the background leading to the provisions and auditors' liability reform in the UK.

Action

## II Meeting with the Administration

### Draft Committee Stage amendments proposed by the Administration

(LC Paper No. CB(1)1821/11-12(01) -- Draft Committee Stage amendments in relation to Part 3 (Company Formation and Related Matters, and Re-registration of Company) of the Bill proposed by the Administration)

### Other relevant papers

(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  
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))

## III Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 18 May 2012 at 8:30 am to meet with the Administration.

*(Post-meeting note: The meeting on 18 May 2012 was re-scheduled to Monday, 21 May 2012, at 2:30 pm.)*

4. There being no other business, the meeting ended at 10:28 am.

Council Business Division 1  
Legislative Council Secretariat  
28 September 2012

## Bills Committee on Companies Bill

**Proceedings of the thirty-eighth meeting  
on Wednesday, 16 May 2012, at 8:30 am  
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000330-000638	Chairman	Opening remarks and arrangements for the meeting	
<u>Presentation of views of deputations</u>			
000639-000903	Federation of Hong Kong Industries ("FHKI")	<p><i>FHKI's views</i> (Submission -- LC Paper No. CB(1)1898/11-12(01))</p> <p>(a) Support the proposal to introduce criminal sanction under clause 399 against auditors' wilful or reckless omission of statements required to be contained in an auditor's report because auditors had professional duty and performed an important gatekeeper role in enhancing integrity of the corporate financial reporting system, thus strengthening protection for the interests of shareholders and investors.</p> <p>(b) Similar provisions were found in the 2006 Companies Act of the United Kingdom ("UKCA 2006").</p> <p>(c) The proposal should not lead to increase in auditing fees for companies.</p> <p>(d) The Administration should arrange publicity to enhance understanding of the small and medium sized enterprises on the proposal.</p>	
000904-001239	The Hong Kong Electronic Industries Association ("HKEIA")	<p><i>HKEIA's views</i> (Submission -- LC Paper No. CB(1)1898/11-12(02))</p> <p>(a) Support clause 399 which had struck the appropriate balance between interests of companies and auditors without imposing an onerous duty on auditors.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Auditors had responsibility to safeguard investors' interests. Clause 399 would ensure auditors' independent gatekeeper role in respect of the company's financial reporting and enhance investors' confidence in the company's regulatory regime.</p> <p>(c) The proposal should not lead to increase in auditing fees for companies.</p>	
001240-001810	Hong Kong Institute of Certified Public Accountants ("HKICPA")	<p><i>HKICPA's views</i> (Submission -- LC Paper Nos. CB(1)1743/11-12(01) and (02))</p> <p>(a) HKICPA had grave concerns over clause 399 including the consequences of the clause and the potential implications of criminal liability on its members, timeframe for taking prosecution, persons liable to be prosecuted, the primary responsibility of investigation, and issues relating to materiality and professional judgement in investigation.</p> <p>(b) HKICPA strongly queried the need for imposing criminal sanction on auditors under clause 399 given the Institute's power to discipline its members.</p> <p>(c) While similar provisions on criminal sanction against auditors existed in UKCA 2006, such provisions were included in the law as part of a package to bring about auditors' liability reform in the UK. Hence clause 399 should not be introduced on its own when there was no similar package for auditors.</p>	
<u>Exchange of views with deputations</u>			
001811-002139	Chairman Administration	<p>The Chairman declared interests as a Certified Public Accountant and a non-executive director of an accounting firm.</p> <p>The Administration's initial response to the deputations' views as follows --</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(a) The criminal sanction under clause 399 was necessary for enforcement of the auditor's duty under clause 398 relating to auditor's opinion that the company's financial statements were not in agreement with the accounting records in any material respect and auditor's statement that he failed to obtain all the necessary and material information and explanation.</p> <p>(b) Investors had high expectation of the company's auditor in playing an independent gatekeeper role. The threshold of "knowingly or recklessly" in clause 399 was very high and would not impose an onerous duty on auditors.</p> <p>(c) The Administration would review the drafting of clause 399 to better reflect the policy intent of covering senior members of an audit team who might not be qualified to act as an auditor and excluding junior persons involved in an audit.</p>	
002140-002637	Mr Ronny TONG	Mr Ronny TONG's concerns about the threshold of "knowingly or recklessly" in clause 399 might cover "negligent omissions" by auditors, and the negative impact of criminal liability on the career prospect of auditors	
002638-003351	Mr WONG Ting-kwong HKICPA	<p>HKICPA's concerns that the criminal offence in clause 399 would not involve any element of dishonesty or intent to defraud, and HKICPA members could be easily caught by the offence</p> <p>Mr WONG Ting-kwong's views that auditors as professionals should ensure the integrity of companies' financial reports in protecting the interests of investors, and the Administration should consider HKICPA's views in reviewing clause 399</p>	
003352-004901	Ms Miriam LAU Administration Chairman	Ms Miriam LAU's concern about imposing criminal sanction on acts by professionals and that prosecution/conviction would have serious	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
	HKICPA	<p>implications on the career prospects of professionals</p> <p>Ms Miriam LAU's enquiries on the scope of clause 399 and similar provisions in overseas jurisdictions</p> <p>HKICPA's advice that the criminal sanction against auditors in the UKCA 2006 was introduced as a package to balance the legislative changes in limiting the civil liabilities of auditors</p> <p>The Administration's advice that there were general provisions on the liabilities of auditors in the relevant statutes in Australia, Singapore and the Mainland; and clause 399 was modelled on section 507 of the UKCA 2006, and the Administration would review the scope of clause 399 taking into account members' and HKICPA's views as well as suggestions in the submission from the Securities and Futures Commission dated 11 May 2012</p> <p>Ms Ada CHUNG, Registrar of Companies, said that she was appointed by the Financial Secretary to be a member of the Council of HKICPA</p>	
004902-010913	<p>Mr Andrew LEUNG Administration</p> <p>Mr Jeffrey LAM FHKI Chairman HKICPA HKEIA</p>	<p>Mr Andrew LEUNG's and Mr Jeffrey LAM's views that a lot of requirements under the Companies Bill were targeted at directors and officers of companies and non-compliance would result in criminal sanctions, and it was necessary to enhance the responsibility of auditors through introducing criminal sanction under clause 399</p> <p>FHKI's and HKEIA's views that companies and investors relied heavily on the professional advice and service of auditors and it was necessary to strengthen the responsibility of auditors in this regard, and a lot of their members support clause 399</p> <p>HKICPA re-iterated its grave concerns on clause 399 including uncertainty over the persons liable under the clause, the lack of</p>	

Time marker	Speaker	Subject(s)	Action required
		liability relief for auditors in the Companies Bill vis-à-vis that in the UKCA 2006, and the absence of elements of dishonesty and intent to defraud in the offence. It further advised that in the wake of incidents involving accounting irregularities in recent years, HKICPA had introduced a number of measures to strengthen the disciplinary regime on its members.	
010914-011519	Ms Audrey EU	Ms Audrey EU's concern about the scope of clause 399 and persons who would be liable for the offence, e.g. an auditor, or an auditing firm	
011520-011635	Dr Philip WONG	Dr Philip WONG's view that clause 399 had struck the balance between duties of directors and those of auditors	
011636-012824	Mr Ronny TONG Mr Jeffrey LAM Chairman HKICPA	<p>Mr Ronny TONG's concern that while auditors already faced civil liabilities, imposing criminal liability under clause 399 would be too onerous on auditors</p> <p>Mr Ronny TONG's views that it was necessary to add the <i>mens rea</i> in clause 399</p> <p>Request for the Administration to provide written response to the deputations' views, to review clause 399, and to provide information on similar provisions in legislation of other jurisdictions</p> <p>Invitation for HKICPA to provide information on the liability relief package in the UKCA 2006, and suggestions on alternative drafting of clause 399 to address its concerns</p>	The Administration to take action as in paragraph 2 of the minutes
012825-013211	Deputy Chairman HKICPA	<p>Deputy Chairman declared interests that she was a member of HKICPA and an employee of one of the "Big Four" accounting firms.</p> <p>Deputy Chairman expressed concern about clause 399 and enquired about HKICPA's consultation with its members on clause 399.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<u>Draft Committee Stage amendments ("CSAs") in relation to Part 3 of the Bill (LC Paper No. CB(1)1821/11-12(01))</u>			
013212-013533	Chairman Administration	Briefing on the proposed CSAs to clauses 62, 68, 69, 78 and 79	
013534-014735	Administration Senior Assistant Legal Adviser 3 Mr Andrew LEUNG	<u>Clause 80 -- Capital and initial shareholdings</u> Briefing and discussion on the proposed CSAs to the clause	
014736-015818	Administration	Briefing on the proposed CSAs to clauses 82, 83, 84, 85, 86, 89, 90, 91, 92, 94, 95, 100, 102, 103, 105, 108, 109, 112, 113, 114, 120, 122, 126 and 128, and sections 3, 4 and 8 of Schedule 2	
015819-015836	Chairman	Date of next meeting and arrangements	

Council Business Division 1  
Legislative Council Secretariat  
 28September 2012