

立法會
Legislative Council

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

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the forty-first meeting held on
Saturday, 26 May 2012, at 9:00 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
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 Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : 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 Andrew LEUNG Kwan-yuen, GBS, JP
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 Nick AU YEUNG
Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies

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

Mrs Christine Frances SIT
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

Mr Henry CHAN
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

Draft Committee Stage amendments to Part 9 of the Bill

(LC Paper No. CB(1)1979/11-12(01) -- Draft Committee Stage amendments in relation to Part 9 (Accounts and Audit) of the Bill proposed by the Administration)

Administration's response to deputations' views on clause 399 (offences relating to contents of auditor's report)

(LC Paper No. CB(1)1979/11-12(02) -- Administration's response to deputations' views on clause 399

LC Paper No. CB(1)1991/11-12(01) -- Submission dated 24 May 2012 from the Hong Kong Institute of Certified Public Accountants)

Draft miscellaneous Committee Stage amendments

(LC Paper No. CB(1)1979/11-12(03) -- Draft miscellaneous Committee Stage amendments to the Companies 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

Action

- 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 **Appendix**).

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

- (a) to improve the Committee Stage amendments ("CSAs") to clause 365 in the light of comments of the Chairman and Senior Assistant Legal Adviser 3;
- (b) to consider changing "14 days" in clause 418 to "15 days";
- (c) to consider providing a defence for the offence under the new clause 425A to cover accidental omission;
- (d) to delete the proposed CSAs to add the new clause 69A; and
- (e) to consider adding a note under clause 529(6) (in Part 11) to draw readers' attention to the new clause 531A.

II Any other business

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

4. There being no other business, the meeting ended at 11:39 am.

Council Business Division 1
Legislative Council Secretariat
11 October 2012

Bills Committee on Companies Bill

**Proceedings of the forty-first meeting
on Saturday, 26 May 2012, at 9:00 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Committee Stage amendments to Part 9 of the Bill (LC Paper No. CB(1)1979/11-12(01))			
000921-001353	Administration	Briefing on the proposed Committee Stage amendments ("CSAs") to clauses 357, 358 and 363	
001354-003530	Administration Chairman Senior Assistant Legal Adviser 3 ("SALA3") Dr Philip WONG	<u>Clause 365 -- Primary accounting reference date</u> Briefing and discussion on the proposed CSAs to the clause The Administration would improve the CSAs to the clause in the light of comments of the Chairman and SALA3	The Administration to take action as in paragraph 2(a) of the minutes
003531-004834	Administration Chairman SALA3 Dr Philip WONG Mr Albert HO	Briefing and discussion on the proposed CSAs to clauses 369 to 371, 373, 375 to 377 and new clause 377A	
004835-005329	Administration Chairman SALA3	Briefing on the proposed CSAs to clause 378, new clauses 378A, 378B and 378C	
005330-005559	Administration Dr Philip WONG	Briefing and discussion on the proposed CSAs to clauses 379 and 380 and new clause 380A	
005560-010712	Administration	Briefing on the proposed CSAs to clauses 382, 384, 386, 387, 389, 391, 394, 396, 404, 405, 408 to 410, 413, 414, and 416	
010713-010923	Administration Chairman	<u>Clause 418 -- Court may order statement of circumstances not to be sent</u> Briefing and discussion on the proposed CSAs to the clause The Administration to consider changing "14 days"	The Administration to take action as in

Time marker	Speaker	Subject(s)	Action required
		in the clause to "15 days"	paragraph 2(b) of the minutes
010924-011127	Administration	Briefing on the proposed CSAs to clauses 420, 422 to 424	
011128-011338	Administration SALA3	<p><u>Clause 425A -- Company must send to non-voting members other documents</u></p> <p>Briefing and discussion on the proposed CSAs to the clause</p> <p>The Administration to consider providing a defence for the offence under the clause to cover accidental omission</p>	The Administration to take action as in paragraph 2(c) of the minutes
011339-012554	Administration Chairman	Briefing on the proposed CSAs to clauses 426, 431, 433, 434, 436 to 439, 441, 442	
<u>Draft miscellaneous Committee Stage amendments relating to Parts 1, 3, 11 and 12 of the Bill (LC Paper No. CB(1)1979/11-12(03))</u>			
012555-015057	Chairman Administration SALA3 Assistant Legal Adviser 2 Mr Albert HO	<p>Briefing and discussion on the proposed CSAs in the paper</p> <p>The Administration would delete the proposed CSAs to add the new clause 69A.</p> <p>The Administration would consider adding a note under clause 529(6) (in Part 11) to draw readers' attention to the new clause 531A.</p>	The Administration to take action as in paragraphs 2(d) and 2(e) of the minutes
<u>Administration's response to deputations' views on clause 399 (offences relating to contents of auditors' report) (LC Paper Nos. CB(1)1979/11-12(02) and CB(1)1991/11-12(01))</u>			
015058-015700	Administration	<p>Briefing on the Administration's paper (LC Paper No. CB(1)1979/11-12(02)) as follows --</p> <p>(a) Most of the deputations which had provided views to the Bills Committee agreed that there should be appropriate criminal sanction in relation to the auditor's report but the Hong Kong Institute of Certified Public Accountants ("HKICPA") had expressed grave concern on the offence under clause 399.</p> <p>(b) The Securities and Futures Commission considered that the wording of clause 399</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>should be revised to better reflect the intention of covering persons who did not hold a practising certificate under the Professional Accountants Ordinance (Cap. 50) but were involved in an audit.</p> <p>(c) The Administration considered that 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. To address the above concerns/views, the Administration had revised clause 399 (the wording was in the Annex to the paper). HKICPA had been consulted on the revised clause.</p>	
015701-020018	Chairman SALA3	<p>The Chairman declared interests as a Certified Public Accountant and a non-executive director and the co-chairman of the board of directors of an accounting firm</p> <p>The Chairman's concern that the prosecution threshold of "knowingly or recklessly" in the revised clause 399(1)(b) was different from HKICPA's proposal of "dishonesty or with intent to defraud"</p> <p>The Administration's advice that the prosecution threshold of "knowingly or recklessly" was very high and would not catch "mere negligence", and raising the threshold would seriously compromise the effectiveness of the offence provision</p>	
020019-020227	Mr Jeffrey LAM	Mr Jeffrey LAM's support for the revised clause 399 as auditors had the statutory duty to report irregularities on the financial statements prepared by companies in order to protect the interests of shareholders and investors	
020228-020827	Mr Albert HO Administration Chairman	Mr Albert HO's views that it was appropriate to impose criminal liability on auditors under clause 399, and the fine of \$150,000 was on the low side and might not have sufficient deterrent effect	

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman's views that auditors would face civil liabilities for omission of important information in the financial report of a company, criminal liability would have serious implications on an auditor's career, and the revised clause 399 would exclude junior staff involved in an audit from criminal liability</p>	
020828-023845	<p>Dr Philip WONG Chairman Administration Mr Abraham SHEK SALA3 Mr Jeffrey LAM</p>	<p>Dr Philip WONG supported imposing criminal liability on auditors under clause 399.</p> <p>Mr Abraham SHEK expressed support for the revised clause 399 but had reservation on the high prosecution threshold of "knowingly or recklessly" in the revised clause 399(1)(b), and opined that the maximum penalty for the offence should be increased to include imprisonment.</p> <p>The Administration's views that the revised clause 399 had struck a proper balance between upholding the accuracy of financial reports and avoiding placing an onerous duty on auditors, and deletion of the words "knowingly or recklessly" might turn the offence into a strict liability offence</p> <p>Mr Jeffrey LAM considered the revised clause 399 acceptable in principle as shareholders, especially small investors, held high expectation of the company's auditor in playing an independent gatekeeper's role in the company's financial report.</p> <p>The Chairman's remarks that the mainstream view of the Bills Committee was in support of the revised clause 399</p>	
<u>Any other business</u>			
023846-023909	Chairman	Date of next meeting and items for discussion	