

立法會
Legislative Council

LC Paper No. CB(1)14/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the forty-second meeting held on
Wednesday, 30 May 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)
Hon Albert HO Chun-yan
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 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
Prof Hon Patrick LAU Sau-shing, SBS, JP

Member absent: Hon Miriam LAU Kin-ye, GBS, 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)

Ms Ada CHUNG, JP
Registrar of Companies

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

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

Mrs Christine Frances SIT
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

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

Qualifying criteria for private companies to prepare simplified financial and directors' reports (Part 9)

(LC Paper No. CB(1)2019/11-12(01) -- Administration's paper on qualifying criteria for private companies to prepare simplified financial and directors' reports)

Administration's response to deputations' views on clause 664 relating to the headcount test

(LC Paper No. CB(1)2019/11-12(02) -- Administration's response to deputations' views on clause 664 relating to the headcount test and proposed way forward)

Imposition of daily default fines for offences attracting a Level 3 penalty

(LC Paper No. CB(1)1946/11-12(01) -- Administration's response to issues raised by members at the meeting on 4 May 2012 in relation to the imposition of daily default fines for offences attracting a Level 3 penalty

Action

- LC Paper No. LS66/11-12 -- Paper on alignment of penalties for offences under the Companies Bill prepared by the Legal Service Division
- 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)1490/11-12(02) -- Administration's response to issues raised at the meeting on 16 March 2012 in relation to alignment of penalties for offences under the Companies Bill)

Draft miscellaneous Committee Stage amendments

- (LC Paper No. CB(1)2019/11-12(03) -- Draft Committee Stage amendments to the Companies Bill -- Other Miscellaneous 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))

Action

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 provide information on the position of headcount test in Canada; and
- (b) to provide a paper to explain the procedures involved for sanctioning a scheme of arrangement by the court (including the operation of the 10% objection rule), and to address the concern about high legal costs to be faced by minority shareholders who had good reasons in objecting to a members' scheme.

II Any other business

3. Members noted that the Administration proposed to resume the Second Reading debate on the Bill at the Council meeting of 27 June 2012. The Chairman said that he would report on the deliberations of the Bills Committee at the House Committee meeting on 8 June 2012. The Bills Committee further agreed that members who wished to propose Committee Stage amendments to the Bill should be invited to submit the drafts to the Bills Committee for consideration.

4. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 31 May 2012 at 8:30 am to meet with the Administration.

5. There being no other business, the meeting ended at 10:20 am.

Bills Committee on Companies Bill

**Proceedings of the forty-second meeting
on Wednesday, 30 May 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<u>Qualifying criteria for private companies to prepare simplified financial and directors' reports (Part 9) (LC Paper No. CB(1)2019/11-12(01))</u>			
000355-002550	Chairman Administration Mr Andrew LEUNG Mr Abraham SHEK Mr WONG Ting-kwong	<p>The Administration's briefing on the paper as follows --</p> <p>(a) In December 2011, the Administration conducted a public consultation to seek views on whether large private companies/groups with members' approval should be allowed to adopt simplified reporting, and invited the Hong Kong Institute of Certified Public Accountants ("HKICPA") to review the criteria in the Small and Medium-sized Entity-Financial Reporting Framework.</p> <p>(b) Taking into account the conclusions of the Administration's and HKICPA's consultations, the Administration proposed to (i) double the size criteria of a company to HK\$100 million in assets, HK\$100 million in revenue and having 100 employees while maintaining the "two out of three" approach; and (ii) preserve the existing option under section 141D of the Companies Ordinance for private companies (not being members of corporate groups) to adopt simplified reporting.</p> <p>(c) The Administration considered that there were merits in the proposal for larger companies/groups to opt in if their members holding at least 75% of the voting rights so resolve and no other members object, and subject to their size not exceeding a higher threshold. The Bills Committee's views were invited on whether this proposal should be pursued and whether the higher threshold should be set</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>at HK\$200 million.</p> <p>Support from Mr Andrew LEUNG, Mr Abraham SHEK and Mr WONG Ting-kwong for the proposals in items (b) and (c) above</p> <p>Mr WONG Ting-kwong's view that there should be regular review on the size criteria to cater for development in the market</p> <p>The Chairman echoed the views and stressed the need for the Administration to arrange publicity on the new simplified reporting regime, and to undertake timely review on the criteria adopted in each proposal, for example, starting after two years of the implementation of the simplified reporting regime.</p>	
<p><u>Administration's response to deputations' views on clause 664 relating to the headcount test (LC Paper No. CB(1)2019/11-12(02))</u></p>			
002551-003353	Administration	<p>The Administration's briefing on the paper as follows --</p> <p>(a) After considering the deputations' views expressed at the meeting on 23 March 2012 and subsequent submissions as well as members' views, the Administration proposed to replace the headcount test in a members' scheme of arrangement involving a general offer or takeover offer by the "10% objection rule" in Rule 2.10(b) of the Code on Takeovers and Mergers (the "Takeover Code") with suitable modification to fit into the Companies Bill context. The "10% objection rule" in essence provided that a resolution to approve a members' scheme could be defeated if the number of votes cast against it was more than 10% of the votes attaching to all disinterested shares. In addition, a members' scheme could only be implemented with the sanction of the court.</p> <p>(b) For other types of schemes such as creditors' schemes, the headcount test would be retained.</p>	

Time marker	Speaker	Subject(s)	Action required
003354-004751	Mr Albert HO Administration Chairman	<p>Discussion on the positions of overseas jurisdictions on the retention or otherwise of the headcount test, and measures to protect the interests of minority shareholders in a members' scheme</p> <p>Concern about high legal costs borne by minority shareholders in objecting to a members' scheme</p> <p>Request for the Administration to provide information on the position of headcount test in Canada</p>	The Administration to take action as in paragraph 2(a) of the minutes
004752-010324	Senior Assistant Legal Adviser 3 ("SALA3") Administration Chairman Mr Albert HO	<p>Concern about high legal costs to be borne by minority shareholders in objecting to a members' scheme, and how the court considered the award of costs on parties with reference to the PCCW case</p> <p>Discussion on how the rule of disinterested shareholder was to apply to the 10% objection rule, and whether the concept of "persons acting in concert" used in the Takeover Code should be adopted in relation to the 10% objection rule under the Administration's revised proposal</p> <p>The Administration undertook to provide a paper to explain the procedures involved for sanctioning a scheme of arrangement by the court (including the operation of the 10% objection rule), and to address the concern about high legal costs to be faced by minority shareholders who had good reasons in objecting to a members' scheme.</p>	The Administration to take action as in paragraph 2(b) of the minutes
010325-011729	Deputy Chairman Administration Mr Albert HO SALA3 Chairman	The Deputy Chairman's and Mr Albert HO's concern about measures under the Administration's revised proposal/ assistance available to protect the interests of minority shareholders	
011730-012132	Mr Abraham SHEK Mr Jeffrey LAM	Mr Abraham SHEK's and Mr Jeffrey LAM's support for the Administration's revised proposal, and their views that it was important to protect the interests of minority shareholders and that provisions in the Companies Bill should cater for all types of companies while listed	

Time marker	Speaker	Subject(s)	Action required
		companies should be regulated by the Takeover Code	
<u>Imposition of daily default fines for offences attracting a Level 3 penalty (LC Paper No. CB(1)1946/11-12(01))</u>			
012133-013107	Chairman Administration	Briefing on the paper which set out, among others, the Administration's revised proposal to restore the daily default fines for 8 non-filing offences out of a total of 27 non-filing offences which attracted a maximum fine level at Level 3 (i.e. the daily default fines for 19 non-filing offences with Level 3 fine would be removed)	
013108-013621	Mr Jeffrey LAM Assistant Legal Adviser 2 ("ALA2") Mr Andrew LEUNG Administration	Mr Jeffrey LAM's and Mr Andrew LEUNG's support for the Administration's revised proposal	
<u>Draft miscellaneous Committee Stage amendments (LC Paper No. CB(1)2019/11-12(03))</u>			
013622-014048	Chairman SALA3 Mr Jeffrey LAM	Briefing and discussion on the paper covering miscellaneous Committee Stage amendments ("CSAs") on Parts 1, 4, 5, 7, 9, 19, 20, 21 and Schedule 8	
<u>Qualifying criteria for private companies to prepare simplified financial and directors' reports (Part 9) (LC Paper No. CB(1)2019/11-12(01))</u>			
014049-014551	Deputy Chairman Administration Chairman	Seeking clarification on the Administration's revised proposal on the qualifying criteria for private companies to prepare simplified financial and directors' reports	
<u>Any other business</u>			
014552-015000	Mr Andrew LEUNG Administration Chairman ALA2	Date for resumption of the Second Reading debate Agreement to invite members who wished to propose CSAs to the Bill to submit their drafts to the Bills Committee Date of the next meeting	