

**立法會**  
**Legislative Council**

LC Paper No. CB(1)15/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/10/2

**Bills Committee on Companies Bill**

**Minutes of the forty-third meeting held on  
Thursday, 31 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  
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** : 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 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

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

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Action

**I Meeting with the Administration**

Matters arising from previous meetings

- (LC Paper No. CB(1)2054/11-12(01) -- Administration's supplementary paper on 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
- CB(1)2059/11-12(01) -- Draft Committee Stage amendments to Schedules 9 and 9A proposed by the Administration
- CB(1)2059/11-12(02) -- Draft Committee Stage amendments to Schedule 10 proposed by the Administration)

Other relevant papers

- (LC Paper No. CB(3)412/10-11 -- The Bill
- 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 **Appendix**).

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

- (a) to consider members' suggestion of adding a provision governing the award of legal costs for proceedings by which members of a company seek to challenge a scheme of arrangement; and
- (b) to consider members' suggestion of setting up a litigation fund to support small investors in pursuing legal actions relating to minority rights.

Action

**II Any other business**

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Tuesday, 5 June 2012 at 8:30 am to meet with the Administration.

4. There being no other business, the meeting ended at 9:47 am.

Council Business Division 1  
Legislative Council Secretariat  
11 October 2012

## Bills Committee on Companies Bill

**Proceedings of the forty-third meeting  
on Thursday, 31 May 2012, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<u>Supplementary information in relation to headcount test (clause 664) (LC Paper No. CB(1)2054/11-12(01), tabled at the meeting)</u>			
001045-001915	Chairman Administration	Briefing on the paper	
001916-002311	Deputy Chairman	The Deputy Chairman's concern on the burden of legal costs on minority shareholders who seek to challenge a members' scheme, and her suggestion for the Administration and the Securities and Futures Commission to consider setting up a litigation fund to assist small investors in pursuing legal actions against companies on unfair treatment	
002312-002631	Ms Audrey EU Administration	Ms Audrey EU's suggestion for the Administration to add a provision in the Bill that if minority shareholders challenged a members' scheme, the court could only order them to pay the legal costs when their challenge was frivolous or vexatious	
002632-004300	Mr Albert HO Administration	Mr Albert HO's suggestion that the Administration should consider adding a provision to require the company to pay the legal costs of the minority shareholders who challenged the scheme in court	
004301-004340	Deputy Chairman	The Deputy Chairman's request for the Administration to give an undertaking during the resumption of the Second Reading debate on the Bill to study her proposal about the setting up of a litigation fund to help small investors	
004341-005245	Mr Albert HO Administration	Mr Albert HO's concerns about the protection for the interests of minority shareholders under the Administration's revised proposal, and the different basis adopted for implementing the 10% objection rule in the revised proposal, i.e.	

Time marker	Speaker	Subject(s)	Action required
		the concept of "disinterested members' approval" used in the Companies Bill vis-à-vis that of "persons acting in concert" adopted in the Code on Takeovers and Mergers (the "Takeover Code")	
005246-005717	Mr WONG Ting-kwong	Mr WONG Ting-kwong's support for the Administration's revised proposal, and his suggestion for the Administration to consider Ms Audrey EU's proposal to add a provision that minority shareholders should not be required to pay the legal costs in challenging a members' scheme unless the challenge was frivolous or vexatious	
005718-010033	Mr Abraham SHEK	Mr Abraham SHEK's views that he considered the Administration's revised proposal to replace the headcount test by the 10% objection rule (with modification) acceptable as it had struck a balance between the operation of the company and the protection of minority shareholders' interests, Ms Audrey EU's proposal could be pursued but there must be safeguards to prevent abuse, and Ms Starry LEE's suggestion of setting up a litigation fund should be explored	
010034-011236	Mr Andrew LEUNG Prof Patrick LAU Administration Mr Abraham SHEK Mr WONG Ting-kwong Chairman	<p>Mr Andrew LEUNG's views that the Administration's revised proposal would enhance protection for minority shareholders' interests in a members' scheme, the court had wide discretion in awarding costs taking into account the circumstances of shareholders objecting to a members' scheme, the Takeover Code and the Securities and Futures Ordinance were more effective measures for regulation of listed companies</p> <p>Mr Abraham SHEK and Mr Jeffrey LAM urged the Administration to undertake during the resumption of the Second Reading debate on the Bill to study the proposal of setting up a litigation fund for small investors</p> <p>The Administration's undertaking to consider members' suggestions of adding a provision on legal costs for members of a company to challenge a scheme of arrangement with reference to clause 727, and setting up a</p>	The Administration to take action in paragraphs 2(a) and 2(b) of the

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		litigation fund to support small investors in pursuing legal actions	minutes
<u>Draft miscellaneous Committee Stage amendments (LC Paper Nos. CB(1)2059/11-12(01) and (02))</u>			
011237-011440	Chairman Administration	The Chairman's remarks that the Administration had tabled two papers on miscellaneous Committee Stage amendments relating to Schedules 9, 9A and 10 at the meeting, and the legal advisers to the Bills Committee were examining the contents and would follow up with the Administration where necessary	
<u>Any other business</u>			
011441-011721	Chairman Administration Mr Andrew LEUNG Mr Jeffrey LAM Mr Abraham SHEK	Date of next meeting and issues for discussion	