

立法會
Legislative Council

LC Paper No. CB(1)16/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the forty-fourth meeting held on
Tuesday, 5 June 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, 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
- Members absent** : 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
Hon Miriam LAU Kin-ye, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
- 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

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 relating to the costs of legal action in challenging a scheme of arrangement (Part 13)

(LC Paper No. CB(1)2091/11-12(01) -- Draft Committee Stage amendments in relation to the costs of legal action in challenging a scheme of arrangement (Part 13) proposed by the Administration

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)

Draft Committee Stage amendments relating to qualifying criteria for private companies to prepare simplified financial and directors' reports (Part 9)

(LC Paper No. CB(1)2091/11-12(02) -- Draft Committee Stage amendments in relation to qualifying criteria for private companies to prepare simplified financial and directors' reports (Part 9) 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))

Action

The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).

- Admin 2. The Bills Committee requested the Administration to further amend its proposed Committee Stage amendments ("CSAs") to the new clause 665A to provide assurance to minority shareholders that they would not have to bear the legal costs of the company unless their objection to the scheme of arrangement was frivolous or vexatious. The revised CSAs would be issued to members for consideration by circulation.

(Post-meeting note: The revised CSAs on the new clause 665A were circulated to members vide LC Paper No. CB(1)2115/11-12(01) on 6 June 2012.)

3. Members of the Bills Committee who wished to move CSAs to the Bill had been invited to provide their draft CSAs to the Clerk on or before 1 June 2012. Members noted that no members had indicated that they would move CSAs to the Bill by the above deadline. The Bills Committee had completed its work and the Chairman would make a verbal report on the deliberations of the Committee at the House Committee meeting on 8 June 2012. The Administration proposed to resume the Second Reading debate on the Bill at the Council meeting of 27 June 2012, and the deadline for giving notice to move CSAs to the Bill would be 16 June 2012.

II Any other business

4. There being no other business, the meeting ended at 9:21 am.

Council Business Division 1
Legislative Council Secretariat
11 October 2012

Bills Committee on Companies Bill

**Proceedings of the forty-fourth meeting
on Tuesday, 5 June 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<u>Follow-up action to the meeting of 31 May 2012 -- Costs of legal action in challenging a scheme of arrangement (LC Paper No. CB(1)2091/11-12(01))</u>			
000557-001231	Chairman Administration Senior Assistant Legal Adviser 3 ("SALA3")	<p>Briefing on the Administration's proposed Committee Stage amendments ("CSAs") in relation to the costs of legal action for members of a company to challenge a scheme of arrangement (new clause 665A)</p> <p>Concern that the proposed CSAs had not fully reflected members' suggestion raised at the meeting on 31 May 2012</p> <p>The Administration's response that it would consider members' views on the proposed CSAs</p>	
<i>Suspension of meeting (001232-001425)</i>			
001426-002617	Chairman Ms Audrey EU Mr Andrew LEUNG Mr Abraham SHEK SALA3	<p>Ms Audrey EU's suggestion that in order to allay minority shareholders' concern about legal costs, the proposed CSAs should provide that the court should only make a costs order against a member challenging a scheme of arrangement if his challenge was frivolous or vexatious</p> <p>Mr Andrew LEUNG's view that the Administration's proposed CSAs had struck a proper balance between the interests of the company and the minority shareholders, and his concern that lowering the threshold on legal costs for members of the company might lead to abuse and unnecessary legal disputes</p> <p>Mr Abraham SHEK's support for the Administration's proposed CSAs to provide that the court might only make a costs order in favour of the members of the company if they were acting in good faith and had reasonable grounds for opposing a scheme of arrangement</p>	

Time marker	Speaker	Subject(s)	Action required
002618-004145	Mr Ronny TONG Ms Audrey EU Administration Mr Abraham SHEK Chairman Mr Andrew LEUNG	<p>Mr Ronny TONG's suggestion that the company proposing a scheme of arrangement should be required to implement measures to protect the interests of minority shareholders, such as engaging professionals to conduct analysis on the merits of the scheme for consideration by shareholders</p> <p>The Chairman's and Mr Abraham SHEK's concern that Mr Ronny TONG's proposal might lead to abuse</p> <p>The Administration's response that there were safeguards in the Code on Takeovers and Mergers (the "Takeover Code") to protect the interests of minority shareholders, including the setting up of an independent board committee comprising all non-executive directors to seek advice from an independent financial adviser on the merits of the scheme</p> <p>Mr Andrew LEUNG's views that the Takeover Code offered additional safeguard for protection of minority shareholders' interests</p> <p>Request for the Administration to consider Ms Audrey EU's suggestion to add a provision to provide assurance to minority shareholders that they would not have to bear the legal costs of the company unless their objection to the scheme of arrangement was frivolous or vexatious</p>	The Administration to take action as in paragraph 2 of the minutes
<u>Follow-up action to the meeting of 30 May 2012 -- Qualifying criteria for private companies to prepare simplified financial and directors' reports (LC Paper No. CB(1)2091/11-12(02))</u>			
004146-004535	Chairman SALA3 Administration	<p>Discussion on the Administration's proposed CSAs in relation to the qualifying criteria for private companies to prepare simplified financial and directors' reports</p> <p>The Administration's undertaking to make technical amendments to the proposed CSAs in the light of SALA3's comments</p>	
004536-004833	Chairman Clerk Administration	Members took note that no members of the Bills Committee had indicated that they would propose CSAs to the Bill.	

Time marker	Speaker	Subject(s)	Action required
	Mr Ronny TONG	Date of resumption of the Second Reading debate on the Bill	
004834-005128	Chairman Administration	Vote of thanks to members of the Bills Committee, the LegCo Secretariat, and the Administration for support on the work of and contribution to the Bills Committee	

Council Business Division 1
Legislative Council Secretariat
11 October 2012