

立法會
Legislative Council

LC Paper No. CB(1)1420/98-99

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Paper for the House Committee meeting on 4 June 1999

**Report of the Bills Committee on
Companies (Amendment) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on Companies (Amendment) Bill 1999 (“the Bill”).

The Bill

2. The Bill seeks to update and streamline the operation of the Companies Ordinance (Cap 32) (“the Ordinance”). The main purposes of the Bill are to:
- (a) provide the benefits of merger relief to companies in cases of mergers and reconstructions;
 - (b) introduce a new procedure for deregistering solvent, defunct private companies;
 - (c) remove the requirement to record and report the nationalities of company directors and secretaries; and
 - (d) introduce some miscellaneous amendments to improve on the drafting and procedures of the Ordinance.

The Bills Committee

3. At the meeting of the House Committee on 12 March 1999, Members decided to form a Bills Committee to study the Bill. Hon Albert HO Chun-yan was elected as Chairman. The membership list of the Bills Committee is at **Appendix I**.
4. The Bills Committee held three meetings to discuss the Bill with the Administration, at one of which a discussion with the Hong Kong Institute of Company Secretaries was also held. The Hong Kong Society of Accountants was invited to assist in the deliberation of the Bills Committee at two of the meetings as it had been heavily involved in formulating the merger relief provisions in the Bill. The Bills Committee has also considered submissions made by The Law Society of Hong

Deliberations of the Bills Committee

5. Having examined the legal requirement relating to merger relief of major common law jurisdictions, the Bills Committee supports the proposed statutory accounting arrangements whereby benefits of merger relief can be provided to companies undergoing certain acquisitions, mergers and reconstructions. Under the provisions, any share premiums arising from such activities need not be credited to the share premium account and the entities would be accounted for as though they had always been combined. Furthermore, the pre-acquisition profits or reserves of the acquired company will not be capitalised but will be available to the group for distribution.

6. The Bill proposes to add the section “291AA Application to Registrar for deregistration of defunct private company”. Under this section, an application for deregistration of a company must be accompanied by a written notice from the Commissioner of Inland Revenue (CIR) stating that the Commissioner has no objection to the company being deregistered. The Administration subsequently also proposes to introduce a new fee item of \$350 to be charged by CIR for issuing the written notice in the form of a proposed Committee Stage Amendment (CSA). Noting that there are existing statutory provisions under the Inland Revenue Ordinance (Cap 112) and the Companies Ordinance to safeguard the interests of creditors and other affected parties upon a company’s deregistration and the unlikelihood of an inactive company soon to be deregistered to owe a large amount of tax, members questioned the need of the requirement to obtain a “no-objection” notice from CIR and whether the benefit of having such a requirement would justify the cost. The Administration explains that the tax clearance procedure is an integral part of the new deregistration arrangement proposed under the section which aims to provide a fast, simple and inexpensive option to member’s voluntary winding-up. However, the provision of this simplified procedure must be balanced by the Government’s need to protect public revenue. In respect of existing statutory provisions to safeguard the interests of creditors etc., such remedial actions as making recourse to the court to redress the position, the lengthy process of reviving a company and taking action against its officers are both time- and resource-consuming, and will be at the expense of public money. Hence, the specific statutory provision is considered the most effective and efficient means for revenue protection.

7. Having examined an analysis by the Administration of the cases of objections raised by CIR against actions taken by the Registrar of Companies (RC) to strike off registration of companies under section 291 of the Ordinance and the substantial amount of tax money involved, the Bills Committee considers the need of the tax clearance requirement justified. Members have also considered the additional resources required for providing this new service in the cost analysis of the issuance of the “no-objection” notice and the performance pledge of CIR providing a response to such application in about a month, and are convinced that the charge was necessary to recover CIR’s full cost of providing the service. The Bills Committee therefore does

not object to the fee item of \$350 to be charged by CIR for issuing the “no-objection” notice to be included in a CSA in the consequential amendments of the Bill.

8. As to the provisions under the new section “303B Protection of Registrar etc. where computerized information etc. is used”, members of the Bills Committee are dissatisfied that RC would not be liable for any error or omission of computerized information which RC provides for the purposes of the Ordinance. They are particularly concerned that RC would not even be liable for any tort action such as gross negligence. The Bills Committee notes the Administration’s explanation on the difficulty to guarantee the accuracy of computer data bases which, in turn, may be affected by technical problems and completeness and accuracy of manual data entry. However, having checked corresponding provisions in section 23A of the Land Registration Ordinance (Cap 128), which does not seem to offer such a high degree of protection to the Land Registrar, and other similar provisions in other ordinances, members are of the view that the other provisions do not protect Government officers to such an extent. In response, the Administration has reviewed the relevant provisions in the Bill and proposed appropriate CSAs to address members’ concern. The Bills Committee raises no further objection to the provisions.

9. The Bills Committee is concerned about a legal issue in the new section 48F(3) proposed under clause 5 of the Bill. The section has the effect that the provisions of regulations made under this section shall prevail over the provisions in the Ordinance. This is considered unacceptable by the Bills Committee as the making of provisions in ordinances requires more elaborate scrutiny procedures by the Legislative Council than the making of regulations. Regulations are subsidiary legislation to the Ordinance and should not prevail over the latter. The Administration agrees to move an appropriate CSA to delete section 48F(3) and to provide that regulations to be made thereunder will need to be approved by resolution of the Legislative Council.

Committee Stage Amendments

10. The Administration has agreed to move appropriate CSAs as described in paragraphs 7, 8 and 9 above. The Bills Committee also does not object to the Administration’s proposed CSAs to rectify a technical omission to include in the Schedule 1 to the Companies (Fees and Percentages) Order (Cap 32 sub leg C) the court application fee for reinstating a deregistered company under new section 291AB in the Companies (Amendment) Bill 1999 and those to improve the drafting of the Bill by removing superfluous phrases in clauses 26 and 27. The complete set of CSAs is at **Appendix II**.

Recommendation

11. The Bills Committee supports the Bill and the CSAs proposed by the Administration, and recommends resumption of Second Reading debate on the Bill on 23 June 1999.

Advice Sought

12. Members are invited to note the deliberations of the Bills Committee and support the recommendation at paragraph 11 above.

Legislative Council Secretariat

2 June 1999

立法會
《1999 年公司(修訂)條例草案》委員會
Legislative Council
Bills Committee on
Companies (Amendment) Bill 1999

委員名單

Membership List

何俊仁議員 (主席)	Hon Albert HO Chun-yan (Chairman)
丁午壽議員	Hon Kenneth TING Woo-shou, JP
田北俊議員	Hon James TIEN Pei-chun, JP
何世柱議員	Hon HO Sai-chu, JP
李家祥議員	Hon Eric LI Ka-cheung, JP
許長青議員	Hon HUI Cheung-ching
陳鑑林議員	Hon CHAN Kam-lam
單仲偕議員	Hon SIN Chung-kai
劉健儀議員	Hon Mrs Miriam LAU Kin-ye, JP
馮志堅議員	Hon FUNG Chi-kin

合共： 10 位議員
Total: 10 Members

日期: 1999 年 5 月 7 日
Date: 7 May 1999

Appendix II

1st draft: 06.05.99
2nd draft: 19.05.99
3rd draft: 21.05.99

COMPANIES (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services

Clause

Amendment Proposed

- 5 By deleting the proposed section 48F(3) and substituting -
"(3) No regulations shall be made under this section unless a draft of them has been laid before and approved by resolution of the Legislative Council and section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to such regulations."
- 25 In the proposed section 303B -
- (a) in subsection (1), by deleting "neither the Government nor a relevant person shall be" and substituting "a relevant person shall not be personally";
 - (b) by adding -
"(1A) The protection conferred on a relevant person by subsection (1) in

Clause

Amendment Proposed

respect of an error or omission shall not in any way affect any liability of the Government in tort for the error or omission."

26 By deleting the clause and substituting -

"26. Effect of registration under Ordinance

Section 322(3)(g) is amended by repealing everything after "insolvency, of any contributory," and substituting "the provisions of this Ordinance with respect to the personal representatives and to the trustees of bankrupt or insolvent contributories shall apply."."

27. By deleting the clause and substituting -

"27. Contributories in winding up of unregistered company

Section 328(2) is amended by repealing everything after "insolvency, of any contributory," and substituting "the provisions of this Ordinance with respect to the personal representatives of deceased contributories and to the trustees of bankrupt or insolvent contributories shall apply."."

Clause

Amendment Proposed

Schedule By adding -

"Companies (Fees and Percentages) Order

4. Schedule 1 amended

Item 2 of Schedule 1 to the Companies (Fees and Percentages) Order (Cap. 32 sub. leg.) is amended by adding -

"(ca) under section 291AB to reinstate the registration of a company deregistered under section 291AA;"

Inland Revenue Ordinance

5. Section added

The Inland Revenue Ordinance (Cap. 112) is amended by adding -

"88B. Notice of no objection in respect of an application to deregister a company under section 291AA of the Companies Ordinance

(1) On a request made by a person who is entitled to apply for the deregistration of a private company under section 291AA of the Companies Ordinance (Cap. 32), the Commissioner may issue a written notice stating that he has no objection to the

Clause

Amendment Proposed

company being deregistered.

(2) The fee specified in Schedule 11 shall be payable in respect of a request under subsection (1).

(3) The Secretary for the Treasury may by order amend Schedule 11."

6. Schedule added

The following is added -

"SCHEDULE 11

[s. 88B]

FEE PAYABLE ON REQUEST FOR NOTICE UNDER SECTION 88B

The fee payable in respect of a request under s. 88B is \$350."."