

立法會
Legislative Council

LC Paper No. CB(1) 522/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/6/01/2

Bills Committee on Companies (Amendment) Bill 2002

Minutes of eighth meeting
held on Thursday, 28 November 2002, at 10:45 am
in the Chamber of the Legislative Council Building

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP

Members absent : Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Hon NG Leung-sing, JP
Hon Henry WU King-cheong, BBS, JP

Attendance by invitation : Financial Services and the Treasury Bureau

Mr Esmond LEE
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) (Companies)

Mr Arthur AU
Assistant Secretary for Financial Services and the
Treasury (Financial Services) (Companies) 1

Companies Registry

Mr G W E JONES
Registrar of Companies

Mr J S BUSH
Secretary
Standing Committee on Company Law Reform

Ms D SILKSTONE
Registry Solicitor

Department of Justice

Mr J E GUNTER
Senior Assistant Law Draftsman

Mr Vidy CHEUNG
Senior Government Counsel

Clerk in attendance : Miss Becky YU
Chief Assistant Secretary (1)1

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Mary TANG
Senior Assistant Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 339/02-03	--	Minutes of the meeting held on 6 November 2002
LC Paper No. CB(1) 349/02-03	--	Minutes of the meeting held on 11 November 2002
LC Paper No. CB(1) 378/02-03	--	Minutes of the meeting held on 18 November 2002)

The minutes of the meetings held on 6, 11 and 18 November 2002 were confirmed.

II. Meeting with the Administration

LC Paper No. CB(1) 383/02-03(01) -- List of follow-up actions arising from the discussion on 18 November 2002

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration was requested to -

- (a) justify the proposed extension of statutory provision on “credit transaction” and “quasi loan” to cover financial assistance to directors of private companies, which was at variance with the UK Companies Act 1985;
- (b) explain why free accommodation provided by private companies to their directors was allowed whereas accommodation provided at a charge was prohibited under the proposed section 157H;
- (c) consider amending the proposed section 157HA(2) to allow private companies to ratify at a general meeting previous provision of financial assistance, including “credit transaction” and “quasi loan”, to directors;
- (d) advise whether the “purpose” mentioned in the proposed section 157HA(3)(a) would be determined according to the objective or subjective test. To also consider including leasing of premises in the proposed section 157HA(3)(b); and
- (e) advise when and the reason for which the transaction limit under the proposed section 157HA(8) was first set at \$500,000. Consideration should be given to updating the limit taking into account the growth of the Consumer Price Index over the years.

4. There being no other business, the meeting ended at 12:50 pm.

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2002
Meeting on Thursday, 28 November 2002, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000728	Chairman Mr Eric LI Ms Emily LAU	Items to be discussed and confirmation of minutes of meetings on 6, 11 and 18 November 2002 (LC Paper Nos. CB(1) 339, 349 and 378/02-03)	
000729 - 003541	Administration Chairman	Administration's paper on provision of financial assistance to directors at LC Paper No. CB(1) 395/02-03(01)	
003542 - 004046	Mr Eric LI Administration	Rationale for setting the transaction limit at \$500,000 under proposed section 157HA(8)	The Administration to advise the time and justification for setting the transaction limit under proposed section 157HA(8) at \$500,000. Consideration should be given to updating the limit taking into account the growth of Consumer Price Index over the years
004047 - 004146	Chairman Administration	Whether transaction limit of \$500,000 was subject to section 157HA(2)	
004147 - 004544	Mr Eric LI Administration	Practicality of applying a transaction limit of \$500,000	
004545 - 004645	Chairman Administration	Allowing private companies to ratify at general meeting previous provision of financial assistance to directors	The Administration to consider amending proposed section 157HA(2) to allow private companies to ratify at a general meeting previous provision of financial assistance, including "credit transaction" and "quasi loan", to directors

Time marker	Speaker	Subject(s)	Action required
004646 - 005755	Ms Emily LAU Chairman Administration	Difference between United Kingdom and Hong Kong regimes on the extension of statutory provision on “credit transaction” and “quasi loan” to cover financial assistance to directors	The Assistant Legal Adviser 7 to provide comments on the Administration’s paper on provision of financial assistance to directors at LC Paper No. CB(1) 395/02-03(01)
005756 - 010138	Mr Eric LI Chairman	Justification for the extension of prohibition to private companies and the impact of prohibition on private companies which might be used to providing financial assistance to their directors	The Administration to justify the proposed extension of statutory provision on “credit transaction” and “quasi loan” to cover financial assistance to directors of private companies, which was at variance with the UK Companies Act 1985
010139 - 010357	Ms Emily LAU Administration	Reference to recommendation 65 of the Report of the Standing Committee on Company Law Reform (SCCLR) which supported the extension of the statutory provision to cover in generic terms the provision of financial assistance to directors	
010358 - 010906	Chairman Administration	Difficulty in determining what should be regarded as “credit transactions” and “quasi loans” in private companies	
010907 - 011148	Mr Eric LI Administration	Effect of prohibition on existing accounting practice of private companies	
011149 - 011624	Ms Emily LAU Administration	Whether the extension of prohibition to private companies was in fact a recommendation of SCCLR	
011625 - 011651	Mr Eric LI	Practicality of applying extension of prohibition to private companies	

Time marker	Speaker	Subject(s)	Action required
011652 - 011828	Ms Miriam LAU Administration Chairman	Rationale for excluding private companies from the extension of prohibition in UK	
011829 - 012749	Chairman Administration	Whether the provision of accommodation for directors by companies fell within the scope of “credit transaction” or “quasi loan”	The Administration to explain why free accommodation provided by private companies to their directors was allowed whereas accommodation provided at a charge was prohibited under proposed section 157H
012750 - 013558	SALA2 Administration	Whether a time limit should be imposed if private companies were allowed to ratify their earlier decisions; how to determine whether a transaction was made for the purposes of a company under proposed section 157HA(3)(a); whether proposed section 157HA(3)(b)(i) should be included as an excepted transaction as it did not involve periodic payments; and whether leasing of premises should also be included in proposed section 157HA(3)(b)(i)	
013559 - 014107	SALA2 Chairman Administration	Operation of proposed section 157HA(4)(a) on the need for prior approval of the company at a general meeting for transactions made for the purposes of the company under proposed section 157HA(3)(a) and how these provisions applied to private companies which were already covered under proposed section 157HA(2)	

Time marker	Speaker	Subject(s)	Action required
014108 - 014450	SALA2 Administration	How to determine whether a transaction was made for the purposes of a company under proposed section 157HA(3)(a) and whether leasing of premises should also be included in proposed section 157HA(3)(b)	The Administration to advise whether the “purpose” mentioned in the proposed section 157HA(3)(a) would be determined according to the objective or subjective test. To also consider including leasing of premises in the proposed section 157HA(3)(b)
014451 - 014525	Ms Emily LAU	Need to look into impact of changes on the existing practice of companies	
014526 - 015811	SALA2 Chairman Administration	Civil consequence of transactions contravening section 157H	
015812 - 015900	Chairman Ms Miriam LAU	Need for Bills Committee to have internal discussions on the Bill	
015901 - 015955	Chairman Mr Eric LI	Further views to be submitted by deputations	
015956 - 020045	Chairman	Next meeting to be held on 6 December 2002 at 10:45 am	

Note : The audio records of the above proceedings are kept at the LegCo Library