

立法會
Legislative Council

LC Paper No. CB(1)1040/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the twelfth meeting
held on Thursday, 5 February 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon Albert HO Chun-yan
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon SIN Chung-kai
Hon Henry WU King-cheong, BBS, JP
- Non-Bills Committee Member
Hon Miriam LAU Kin-yee, JP
- Members absent** : Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
- Public officers attending** : Financial Services and the Treasury Bureau
- Ms Shirley LAM
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 4
- Mr Arthur AU
Assistant Secretary for Financial Services and
the Treasury (Financial Services) (4) 1

Companies Registry

Mr Edward LAU
Secretary, Standing Committee on
Company Law Reform

Department of Justice

Mr Allen LAI
Senior Government Counsel

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)6

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Mr Matthew LOO
Senior Council Secretary (1)3

I Meeting with the Administration

LC Paper No. CB(1)934/03-04(01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 29 January 2004 on Schedule 4

LC Paper No. CB(1)934/03-04(02) - List of issues requiring follow-up actions by the Administration on Schedule 4 of the Bill (Position as at 4 February 2004)

LC Paper No. CB(1)2504/02-03(01) - Submission dated 22 September 2003 from the Chinese General Chamber of Commerce

LC Paper No. CB(1)2521/02-03 (03) - Administration's response to written submissions from the Association of International Accountants, the Chinese General Chamber of Commerce and the Stock Exchange of Hong Kong Limited

- LC Paper No. CB(1)2504/02-03(04) - Submission dated 5 September 2003 from Consumer Council
- LC Paper No. CB(1)2521/02-03(04) - Administration's response to written submission from Consumer Council
- LC Paper No. CB(1)2504/02-03 (05) - Submission dated 16 September 2003 from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2521/02-03 (05) - Administration's response to written submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2504/02-03 (11) - Submission dated 22 September 2003 from Linklaters
- LC Paper No. CB(1)798/03-04 (01) - Administration's response to written submission from Linklaters
- LC Paper No. CB(1)2504/02-03(12) - Submission dated 22 September 2003 from the Stock Exchange of Hong Kong Limited
- LC Paper No. CB(1)2504/02-03 (13) - Submission dated 22 September 2003 from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)798/03-04 (02) - Administration's response to written submission from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)2521/02-03 (01) - Submission dated 25 September 2003 from the Hong Kong Chinese Enterprises Association
- LC Paper No. CB(1)2521/02-03(02) - Submission dated 25 September 2003 from School of Business, Hong Kong Baptist University
- LC Paper No. CB(1)798/03-04 (03) - Administration's response to written submission from School of Business, Hong Kong Baptist University

- LC Paper No. CB(1)185/03-04 (01) - Submission dated 27 October 2003 from Hong Kong Society of Accountants
- LC Paper No. CB(1)798/03-04 (04) - Administration's response to written submission from Hong Kong Society of Accountants
- LC Paper No. CB(1)934/03-04 (03) - Submission dated 2 February 2004 from Hong Kong Society of Accountants
- LC Paper No. CB(1)217/03-04 (01) - Submission dated 21 October 2003 from Hong Kong Small and Medium Enterprises Association
- LC Paper No. CB(1)798/03-04 (05) - Administration's response to written submission from Hong Kong Small and Medium Enterprises Association
- LC Paper No. CB(1)786/03-04 (01) - Submission dated 12 January 2004 from Mr Winston POON, SC, Mr Godfrey LAM, Barrister, Ms Linda CHAN, Barrister
- LC Paper No. CB(1)2425/02-03 (01) - Letter dated 29 August 2003 from Assistant Legal Adviser 7 (ALA7) to the Administration on Schedule 4 of the Bill
- LC Paper No. CB(1)849/03-04 (01) - Administration's response dated 17 January 2004
- LC Paper No. CB(1)798/03-04 (06) - Administration's paper on follow-up actions arising from the discussion at the meeting on 2 October 2003 on Schedule 4
- LC Paper No. CB(1)798/03-04 (07) - Administration's paper on international comparisons of shareholders' remedies
- LC Paper No. CB(1)871/03-04 (01) - Summary of written submissions and the Administration's response on Schedule 4 of the Bill (Position as at 28 January 2004)

The Bills Committee continued the scrutiny of Schedule 4 of the Bill (Amendments relating to shareholders' remedies).

2. The Administration undertook to provide information on the following matters -
 - (a) to provide the former version of section 247A(1) of the Australian Corporations Act 2001, and if possible, to advise whether there had been significant changes in the number of applications for inspection of records since enactment of the Australian Corporations Act 2001 or its earlier versions;
 - (b) to clarify the policy intent of the proposed provisions on "Order for inspection", and to consider whether the drafting of proposed section 152FA(2)(b) should be revised to accurately reflect the policy intent;
 - (c) to consider stipulating a minimum shareholding requirement or a minimum number of shareholders requirement for a member or members of a specified corporation to make an application to the court for inspection of the records of the specified corporation;
 - (d) to consider whether apart from proposed sections 152FD and 152FE, any additional provision was required to provide saving for bankers along the line of existing section 152F;
 - (e) to consider whether the drafting of proposed section 152FC(1) needed to be revised to accurately reflect the policy intent, and in this connection, to provide examples to illustrate the respective situations falling under section 152FC(1)(a) and section 152FC(1)(c);
 - (f) to consider how the drafting of proposed section 152FA should be revised to make it clear that the information obtained should be used only in relation to the purpose(s) for which it was sought, unless the court ordered otherwise; and
 - (g) to consider adding an offence provision for improper use of information under proposed section 152FA.

II Any other business

Additional meetings

3. Members agreed that additional meetings should be scheduled for the scrutiny of the Bill. The Clerk would confirm the dates of additional meetings with the Chairman and issue the updated meeting timetable for members' information.

(Post-meeting note: Updated timetable for scrutiny of the Bill was issued to members vide LC Paper No. CB(1)956/03-04 dated 11 February 2004.)

Date of next meeting

4. Members noted that the next meeting would be held on Thursday, 12 February 2004 at 10:45 am. The Bills Committee will continue to scrutinize Schedule 4 of the Bill (Amendments relating to shareholders' remedies) at the next meeting.
5. There being no other business, the meeting ended at 10:30 am.
6. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
19 February 2004

**Proceedings of the meeting of the
Bills Committee on Companies (Amendment) Bill 2003**

**12th meeting on Thursday, 5 February 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000355	Chairman	Welcoming and introductory remarks The Bills Committee continued to scrutinize Schedule 4 of the Bill.	
000356 - 001320	Chairman Administration	Briefing by the Administration on its response to members' queries raised at the last meeting relating to proposed section 152FA <i>[CB(1)934/03-04 (01)]</i>	
001321 - 002009	Chairman Mr SIN Chung-kai Mr Albert HO Ms Miriam LAU Dr Eric LI	The Bills Committee agreed to schedule additional meetings for scrutiny of the Bill	
002010 - 002459	Chairman Ms Miriam LAU	Ms LAU's enquiry about the former versions of the Australian Corporations Act 2001 as some cases cited in the Administration's paper were heard before 2001. Ms LAU's enquiry on how the court, in the Australian cases, had determined whether the application for inspection of records was made in good faith and for proper purpose(s).	
002500 - 002551	Chairman Henry WU	Mr WU's concern on whether there was adequate safeguards against improper use and disclosure of information obtained as a result of inspection	

Time marker	Speaker	Subject(s)	Action required
002552 - 002925	Chairman Administration Ms Miriam LAU	Administration's elaboration on how the court determined whether an application was made in good faith and for proper purpose(s), with reference to the cases cited in the Administration's paper. Administration highlighted that in determining the question of "proper purpose", the court would also consider whether there was adequate evidence to support the stated purpose(s) of the member making the application for inspection of records.	
002926 - 003012	Chairman Administration Ms Miriam LAU	The Administration to provide former version(s) of section 247A(1) of the Australian Corporation Act 2001.	Administration to take the follow up action set out in paragraph 2(a) of the minutes
003013 - 003125	Chairman Administration	The Administration confirmed that the consultation conducted by the Standing Committee on Company Law Reform (SCCLR) was open to the public. About 50 submissions of views were received. Organizations that had been consulted by SCCLR on the proposals in Phase 1 of the Corporate Governance Review.	
003126 - 003256	Chairman Administration	Whether there had been a significant increase in the number of applications for inspection of records in Australia since the enactment of section 247A(1) of the Australian Corporation Act 2001 or the earlier versions.	Administration to take the follow up action set out in paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
003257 - 003809	Chairman Ms Miriam LAU	<p>The extent of evidence required by the court in Australia to determine whether an application for inspection was made for a proper purpose.</p> <p>Any penalty on the applicant if it was subsequently revealed that the application was made for an ulterior purpose different from the purpose stated in the application to the court.</p> <p>The reason for including "having regard to the interests of both the relevant specified corporation and the applicant" in proposed section 152FA, as there were no such wordings in section 247A(1) of the Australian Corporation Act 2001, on which proposed section 152FA was modeled.</p>	

Time marker	Speaker	Subject(s)	Action required
003810 - 004434	Chairman Ms Miriam LAU Administration	<p>Administration clarified that there was no intention to achieve different effect from that of the corresponding provision in Australia by including "having regard to the interests of both the relevant specified corporation and the applicant" in proposed section 152FA. The wordings were also not intended to carry the meaning that the application should be in the interest of both the applicant and the relevant specified corporation.</p> <p>Administration advised that there was no express provision in the Australian Corporations Act on the extent of proof required in an inspection order application. It would seem from one of the reported cases that the court had required the establishment of more than a prima facie case.</p> <p>On safeguards against improper use of information/documents obtained, the Administration highlighted that the court might make order limiting the use of the information or documents obtained as a result of inspection under proposed section 152FA(3). Proposed section 152FC also stipulated that except for certain specified circumstances, a person who disclosed information obtained as a result of inspection without the previous consent of the specified corporation would be guilty of an offence.</p>	

Time marker	Speaker	Subject(s)	Action required
004435 - 005208	Chairman ALA7	ALA7 commented that based on the cases cited in the Administration's paper, it was not clear as to what circumstances would justify an application and/or the extent of evidence required to establish a proper purpose.	
005209 - 010021	Chairman Administration	<p>The Chairman requested the Administration to clarify whether the Administration had in mind any policy intent, principle(s) or threshold which must be met by an applicant as these were not adequately reflected in proposed section 152FA.</p> <p>The Administration responded that the proposal was originated from SCCLR's recommendations (<i>Paragraph 18 of the "Corporate Governance Review by the Standing Committee on Company Law Reform - A Consultation Paper on proposals made in Phase I of the Review (July 2001)</i>).</p>	Administration to take the follow up action set out in paragraph 2(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
010022 - 010804	Chairman Mr Albert HO	<p>Mr HO concurred with the observations of the SCCLR in paragraph 18.02 of the said consultation paper, but considered that -</p> <ul style="list-style-type: none">(a) a minimum shareholding requirement might be required to establish that the applicant had substantive interest in the specified corporation; and(b) it was necessary to restrict the use of the information obtained as a result of inspection. <p>Mr HO also appreciated the difficulties in defining "proper purpose" in the law, and the court might interpret this term on the merits of each application.</p> <p>Mr HO also considered that the proposed provisions on inspection of records should not seek to alter the existing common law principles other than to provide a procedural right for members of a specified corporation to assess to the corporation's records for proper purposes.</p>	

Time marker	Speaker	Subject(s)	Action required
010805 - 011700	Chairman ALA7 Ms Miriam LAU Administration Mr Albert HO	<p>ALA7 pointed out the differences between the proposed arrangement in Hong Kong and those adopted in Australia relating to application for order of inspection of records.</p> <p>Ms Miriam LAU expressed concern on how far the interests of a specified corporation would be considered given the current drafting of section 152FA. She highlighted that the Chinese General Chamber of Commerce had raised concern about the possible burden on companies arising from the proposed arrangement for inspection of records.</p> <p>Administration agreed to consider stipulating a minimum shareholding requirement and/or minimum number of shareholders requirement for application for order of inspection of records, for example, 2.5% of shareholdings or 50 shareholders as in the case of shareholders' resolutions.</p>	Administration to take the follow up action set out in paragraph 2(c) of the minutes
011701 - 011751	Chairman	Administration's response to written submissions relating to Schedule 4 of the Bill <i>[CB(1)871/03-04(01)]</i> <u>Clause 3 - Inspection of specified corporations' records by members</u> Administration's response to Office of the Privacy Commissioner for Personal Data, Hong Kong, Linklaters and Hong Kong Small and Medium Enterprises Association	

Time marker	Speaker	Subject(s)	Action required
011752 - 012929	Chairman ALA7 Administration Mr Albert HO	Administration's response to Linklaters' suggestion that provision should be added to proposed section 152FC to allow the disclosure of information or document obtained to applicant's solicitors or barristers for the purpose of seeking legal advice Administration to consider the need to provide saving for bankers along the line of existing section 152F for protection of interests of banks' customers	Administration to take the follow up action set out in paragraph 2(d) of the minutes
012930 - 013039	Chairman Administration	Administration's response to Linklaters' suggestion that the exception contained in proposed section 152FC(1)(a) should include civil proceedings	
013040 - 014359	Chairman ALA7 Administration	Policy intent of proposed section 152FC , and the differences between subsections (1)(a) and (1)(b)	Administration to take the follow up action set out in paragraph 2(e) of the minutes
014400 - 015209	Chairman Administration ALA7 Mr Albert HO Ms Miriam LAU Dr Eric LI	Administration's response to the Hong Kong Society of Accountants' (HKSA) suggestion that it should be stated explicitly in the law that information obtained under proposed section 152FA should be used or disclosed only in relation to the purpose(s) for which it was sought. Members supported HKSA's suggestion. ALA7 pointed out that the offence under proposed section 152FC(2) was only related to disclosure of information under proposed section 152FC(1) . The Bill did not provide any offence for improper use of the information obtained as a result of inspection of records.	Administration to take the follow up action set out in paragraph 2(f) and (g) of the minutes

Time marker	Speaker	Subject(s)	Action required
015210 - 015414	Chairman Administration	Administration's response to HKSA's views on - <ul style="list-style-type: none">• minimum shareholding requirement for application for inspection of records; and• reference to "any record" in proposed section 152FB	
015415 -015525	Chairman Administration	Date of next meeting	

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19 February 2004