

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1597/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

**Bills Committee on Companies (Amendment) Bill 2003**

**Minutes of the twentieth meeting  
held on Wednesday, 14 April 2004, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Albert HO Chun-yan  
Hon SIN Chung-kai  
Hon Emily LAU Wai-hing, JP
- Members absent** : Dr Hon Eric LI Ka-cheung, GBS, JP  
Hon CHAN Kam-lam, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Henry WU King-cheong, BBS, 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

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**I Confirmation of minutes of meetings**

LC Paper No. CB(1)1441/03-04 - Minutes of meeting on 19 March 2004

LC Paper No. CB(1)1489/03-04 - Minutes of meeting on 25 March 2004

The minutes of the meetings held on 11 and 25 March 2004 were confirmed.

**II Meeting with the Administration**

LC Paper No. CB(1)1490/03-04 (01) - List of issues requiring follow-up actions by the Administration on Schedule 4 of the Bill (Position as at 13 April 2004)

LC Paper No. CB(1)1490/03-04 (02) - Revised draft Committee Stage amendments (CSAs) on Schedule 4 of the Bill provided by Administration on 13 April 2004

LC Paper No. CB(1)1251/03-04 (04) - Submission dated 9 March 2004 from Mr Winston POON, SC, Mr Godfrey LAM, Barrister and Ms Linda CHAN, Barrister

- LC Paper No. CB(1)1318/03-04 (02) - Administration's response to written submission dated 9 March 2004 from Mr Winston POON, SC, Mr Godfrey LAM, Barrister, Ms Linda CHAN, Barrister
- LC Paper No. CB(1)1239/03-04 (01) - Submission dated 5 March 2004 from Hong Kong Institute of Directors
- LC Paper No. CB(1)1318/03-04 (03) - Administration's response to written submission from Hong Kong Institute of Directors
- LC Paper No. CB(1)1041/03-04 (04) - Summary of written submissions and the Administration's response on Schedule 4 of the Bill (Position as at 19 February 2004)
- 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(3)733/02-03 - Bill gazetted on 13 June 2003
- LC Paper No. CB(1)2228/02-03 (06) - Marked-up copy of 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)2282/02-03 - 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)
- LC Paper No. CB(1)1369/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meetings on 20 and 28 February 2004 and 11 March 2004

- LC Paper No. CB(1)1251/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meetings on 20, 26 and 28 February 2004
- LC Paper No. CB(1)1108/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 12 February 2004 on Schedule 4
- LC Paper No. CB(1)1041/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 5 February 2004 on Schedule 4
- 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)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

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

3. The Bills Committee noted that a letter dated 14 April 2004 from Mr Henry WU relating to saving provisions under proposed section 152FD of the Bill was tabled at the meeting.

*(Post-meeting note: The letter was circulated to members vide LC Paper No. CB(1)1524/03-04 on 15 April 2004.)*

4. The Bills Committee had completed clause-by-clause examination and gone through all revised draft Committee Stage amendments (CSAs) on Schedule 4 of the Bill.

### **III Any other business**

#### Date of next meeting

5. Members noted that the next meeting would be held on Thursday, 15 April 2004 at 8:30 am. The Bills Committee would start to scrutinize Schedule 3 of the Bill (Amendments relating to oversea companies and incorporation procedures).

6. There being no other business, the meeting ended at 4:35 pm.
7. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
23 April 2004

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

**20th meeting on Wednesday, 14 April 2004, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000035	Chairman	Confirmation of minutes of meetings on 19 and 25 March 2004	
000036 - 000107	Chairman Mr Albert HO	List of issues requiring follow-up actions by the Administration on Schedule 4 of the Bill <i>[CB(1)1490/03-04 (01)]</i>  The Bills Committee noted that there was no outstanding issue on the list, except that the Administration would conduct further consultation on the proposed statutory derivative action.	
000108 - 000735	Chairman Clerk Mr Albert HO Mr SIN Chung-kai ALA7 Administration	Members noted the letter from Mr Henry WU tabled at the meeting. Mr WU considered that equal treatment should be given to securities dealing companies if saving was provided to bankers in respect of court orders made under <b>proposed sections 152FA and 152FB</b> <i>[CB(1)1524/03-04 (01)]</i>  Members noted that the Liberal Party (LP) had informed the Clerk that LP considered it acceptable to provide saving for solicitors and bankers. However, LP did not insist on providing saving for bankers under <b>proposed section 152FD</b> , and considered it inappropriate to extend the saving to other parties.  The Bills Committee agreed that in respect of any order made under <b>proposed sections 152FA and 152FB</b> , saving should be provided for solicitors only, as was originally proposed by the Administration.	

Time marker	Speaker	Subject(s)	Action required
000736 - 000819	Chairman Administration	Revised draft Committee Stage amendments (CSAs) on Schedule 4 of the Bill provided by the Administration on 13 April 2004 <i>[CB(1)1490/03-04 (02)]</i>	
000820 - 000841	Chairman Administration	<u>Section 1 of Schedule 4 - Interpretation</u> English and Chinese versions	
000842 - 000859	Chairman Administration	<u>Section 2 of Schedule 4 - Proceedings on inspector's report</u> English and Chinese versions	
000900 - 003130	Chairman Administration ALA7 Mr Albert HO Ms Emily LAU	<u>Section 3 of Schedule 4 - Section added</u>  The Bills Committee agreed on the thresholds under <b>proposed section 152FA(2)</b> in relation to application for inspection order.  The Bills Committee agreed on the English version on <b>proposed sections 152FA(1) and 152FA(2)</b> . As regards the Chinese version, the Chairman pointed out the followings -  <ul style="list-style-type: none"> <li>• inconsistency in the use of the words "該" and "有關" when referring to the term "指明法團"</li> <li>• drafting of <b>proposed sections 152FA(1) and 152FA(2)</b> might need to be simplified</li> </ul>	Administration to discuss with ALA7 on the technical drafting aspects

Time marker	Speaker	Subject(s)	Action required
000900 - 003130 (Cont'd)		<p>The Administration explained that under <b>proposed section 152FA(2)(a)</b>, the voting rights requirement was qualified by the expression "<i>at the date of the application</i>" because the proportion of the voting rights of the members making the application might change after the application was made and such change might be out of control of the members. There was no need to apply such time reference to <b>proposed sections 152FA(2)(b) and (c)</b>. This arrangement was modelled on section 115A (Circulation of members' resolutions, etc.) of the Companies Ordinance (Cap. 32).</p> <p>The Bills Committee considered it not necessary to provide a link between the remedies of inspection of records and statutory derivative action by entitling a member who had applied for or had been granted leave to bring/intervene in proceedings on behalf of the company to apply for a court order for inspection of the company's records.</p> <p>Members considered that providing such a link would defeat the purpose of preventing abuse of the "inspection of records" remedy by setting up the threshold under <b>proposed section 152FA(2)</b>.</p>	
003131 - 003233	Chairman Administration Mr Albert HO ALA7	English and Chinese versions of subsections (3) to (5) of <b>proposed section 152FA</b>	
003234 - 003428	Chairman Administration Mr Albert HO ALA7	English and Chinese versions of <b>proposed section 152FB</b>	
003429 - 003614	Chairman Administration ALA7	English and Chinese versions of <b>proposed section 152FC</b>	
003615 - 003646	Chairman ALA7	English and Chinese versions of <b>proposed section 152FD</b>	



Time marker	Speaker	Subject(s)	Action required
003647 - 003701	Chairman Administration	English and Chinese versions of <b>proposed section 152FE</b>	
003702 - 003728	Chairman Administration ALA7 Mr Albert HO	<u>Section 4 of Schedule 4 - Alternative remedy to winding up in cases of unfair prejudice</u> English and Chinese versions of section 4(1) of Schedule 4	
003729 - 005915	Chairman Administration ALA7 Mr Albert HO	The Chairman pointed out the followings relating to the drafting of both English and Chinese versions of <b>proposed section 168A(2)</b> - <ul style="list-style-type: none"> <li>• inconsistency in the Chinese translation ("命令" and "飭令") for the term "order" (used as a verb) in subsections (a) and (b)</li> <li>• drafting of <b>proposed section 168A(2)(b)</b> might need to be simplified</li> <li>• ALA7's comment that the terms "任何成員" and "其他成員" in the Chinese version of <b>proposed section 168A(2)(a)(iv)</b> was not entirely consistent with the English version</li> </ul>	Administration to discuss with ALA7 on the technical drafting aspects
005916 - 005927	Chairman Administration	English version of <b>proposed section 168A(2B)</b>	
005928 - 010549	Chairman Administration Ms Emily LAU Mr Albert HO ALA7	The Chairman pointed out that, similar to <b>proposed section 168A(2)(b)</b> , the drafting of <b>proposed section 168(2C)</b> might need to be simplified	Administration to discuss with ALA7 on the technical drafting aspects

Time marker	Speaker	Subject(s)	Action required
010550 - 013422	Chairman ALA7 Administration Mr Albert HO	<p>Mr Albert HO supported ALA7's suggestion that "<i>then member</i>" should be deleted from <b>proposed section 168A(2CA)</b> as "<i>a member or a past member</i>" already covered all members whether past or present. The term "<i>then member</i>" must be read in context and did not carry a precise meaning on its own. The Administration advised that if "<i>then member</i>" was deleted from <b>proposed section 168A(2CA)</b>, a member who was not entitled to recover by way of damages under this section might recover damages under <b>proposed section 168A(2C)</b>. The Bills Committee agreed to the drafting of <b>section 168A(2C)</b> proposed by the Administration on the understanding that for the avoidance of doubt, all members were not entitled to recover reflective loss suffered by a specified corporation.</p> <p>The Chairman pointed out that under <b>proposed section 168A(2C)</b>, the court could not order payment of damages to the company for recovery of the "reflective loss". The Administration advised that the court might order proceedings to be brought in the name of the company under <b>proposed section 168A(2)(a)(ii)</b> for recovery of such loss.</p>	
013423 - 013433	Chairman Administration	English version of <b>proposed sections 168A(5A) and 168A(5B)</b>	
013434 - 013823	Chairman Administration	Chinese version of <b>proposed sections 168A(2B), 168A(2C), 168A(2CA), 168A(5A) and 168A(5B)</b>	

Time marker	Speaker	Subject(s)	Action required
013824 - 014540	Chairman Administration Mr Albert HO ALA7	<p><u>Section 5 of Schedule 4 - Part IVAA added</u></p> <p>English and Chinese versions of <b>proposed section 168BA</b></p> <p>To facilitate the searching of relevant provisions, Mr Albert HO suggested adding a definition of "statutory derivative action" in the Companies Ordinance (Cap. 32). ALA7 advised that the term "derivative claims" was used in the Civil Procedure Rules of the United Kingdom. The Administration advised that the term "derivative action" was not used in the legislation of oversea jurisdictions including Australia and Singapore.</p>	Administration undertook to consider adding a reference to the term "statutory derivative action" in the heading of Part IVAA of the Companies Ordinance (Cap. 32)
014541 - 014617	Chairman Administration	English version of <b>proposed section 168BB</b>	
014618 - 014705	Chairman Administration	English version of <b>proposed section 168BC</b>	
014706 - 014751	Chairman Administration ALA7	English version of <b>proposed section 168BE</b>	
014752 - 014825	Chairman Administration	English version of <b>proposed section 168BF</b>	
014826 - 014950	Chairman Administration	<p>English version of <b>proposed section 168BG</b></p> <p>The Bills Committee agreed to follow up ALA7's comments (<i>as marked in manuscripts</i>) on <b>proposed section 168BG(2)</b> pending the results of the consultation.</p>	Administration to follow up with ALA7 on <b>proposed section 168BG(2)</b>
014951 - 015310	Chairman Administration ALA7	<p>Chinese version of <b>proposed sections 168BB, 168BC, 168BE, 168BF and 168BG</b></p> <p>The Administration accepted ALA7's suggested amendments to the Chinese version of <b>proposed sections 168BC and 168BE</b>.</p>	
015311 - 015423	Chairman Administration ALA7	English and Chinese versions of <b>proposed section 168BH and 168BI</b>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
015424 - 015625	Chairman Administration	<u>Section 6 of Schedule 4 - Section added</u>  English and Chinese versions of <b>proposed section 350B</b>  The Administration advised that a doubt-avoidance provision ( <b>proposed section 350B(8)</b> ) was added.	
015626 - 015919	Chairman Administration	The Administration would issue letters to consultees shortly on the proposed provisions on statutory derivative action, and would revert to the Bills Committee as soon as possible with a view to enacting this part of the Bill within the current legislative session.  The Bills Committee would proceed to Schedule 3 of the Bill at the next meeting	