

立法會
Legislative Council

LC Paper No. CB(1)1598/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the twenty-first meeting
held on Thursday, 15 April 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
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Emily LAU Wai-hing, JP

Non-Bills Committee Member
Hon Miriam LAU Kin-yee, JP

Members absent : Dr Hon Eric LI Ka-cheung, GBS, 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

Miss Annie KONG
Assistant Secretary for Financial Services and
the Treasury (Financial Services) (4) 2

Companies Registry

Mr G W E JONES
Registrar of Companies

Ms Dorothy SIKSTONE
Registry Solicitor

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)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)217/03-04 (01) - Submission dated 21 October 2003
from Hong Kong Small and Medium
Enterprises Association

LC Paper No. CB(1)1504/03-04 (01) - Administration's response to written
submission from Hong Kong Small
and Medium Enterprises Association

LC Paper No. CB(1)2504/02-03(08) - Submission dated 19 September 2003
from the Law Society of Hong Kong

- LC Paper No. CB(1)2521/02-03(06) - Administration's response to written submission from the Law Society of Hong Kong
- LC Paper No. CB(1)102/03-04(01) - Submission dated 16 October 2003 from the Law Society of Hong Kong
- LC Paper No. CB(1)1504/03-04(02) - Administration's response to written submission from the Law Society of Hong Kong
- 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)1504/03-04(03) - Administration's response to written submission from the Hong Kong Chinese Enterprises Association
- LC Paper No. CB(1)2504/02-03 (11) - Submission dated 22 September 2003 from Linklaters
- LC Paper No. CB(1)1504/03-04 (04) - Administration's response to written submission from Linklaters
- LC Paper No. CB(1)2504/02-03(09) - Submission dated 19 September 2003 from the Hong Kong Association of Banks
- LC Paper No. CB(1)2521/02-03(07) - Administration's response to written submission from the Hong Kong Association of Banks
- 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)74/03-04 (03) - Submission dated 14 October 2003 from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)387/03-04 (01) - Administration's response to written submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)1504/03-04 (05) - Submission dated 3 December 2003 from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)1504/03-04 (06) - Administration's response to written submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- 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)1504/03-04 (07) - Administration's response to written submission from Hong Kong Society of Accountants
- LC Paper No. CB(1)1504/03-04 (08) - Summary of written submissions and the Administration's response on Schedule 3 of the Bill (Position as at 13 April 2004)
- LC Paper No. CB(1)1504/03-04 (09) - Letter dated 8 April 2004 from Assistant Legal Adviser 7 to the Administration on Schedule 3 of the Bill
- LC Paper No. CB(1)1504/03-04 (10) - Comparison table between provisions in relation to overseas companies and incorporation procedures in the Companies Ordinance, Companies (Amendment) Bill 2003, UK Companies Act 1985, Australian Corporations Act 2001 and Singapore Companies Act provided by the Administration

1. The Bills Committee started to scrutinize Schedule 3 of the Bill (Amendments relating to overseas companies and incorporation procedures).
2. The Administration undertook to consider and provide information on the following matters -

Fees relating to overseas companies

- (a) to provide a chart setting out the current and the proposed fees relating to overseas companies and the corresponding fees (including current and proposed fees) for Hong Kong companies;

Registration of charges for overseas companies

- (b) to clarify how far the proposed amendments in relation to registration of charges for overseas companies are based on the relevant recommendations of the Standing Committee on Company Law Reform;
- (c) to clarify the definition of "brought into Hong Kong" under proposed section 91 with illustrations in respect of the charges specified under section 80(2) of the Companies Ordinance, and to provide relevant common law regarding the interpretation of this expression;
- (d) to confirm whether any evidence/supporting documents (including evidence of the date when the property subject to a charge was brought into Hong Kong) are required for registering a charge where the relevant property is brought into Hong Kong after the creation of the charge; how the proposed arrangement compares to that for the registration of charges for Hong Kong companies;
- (e) to clarify whether under proposed section 91, a non-Hong Kong company is obliged to register a charge if only part of the relevant property or only the title documents of the relevant property is brought into Hong Kong;
- (f) to review whether proposed section 91 is sufficient to deal with situations where the relevant properties are brought into and out of Hong Kong from time to time and in-between these movements remain in Hong Kong for different periods of time;
- (g) to meet with the Hong Kong Association of Banks and the Law Society of Hong Kong to discuss the proposed amendments in relation to registration of charges for overseas companies; and

Continuing obligation in respect of authorized representative
Return to be delivered to Registrar where documents, etc. altered

- (h) to review whether proposed section 335(1) adequately covers the situation specified under existing section 333A(2), which is proposed to be deleted.

II Any other business

Date of next meeting

- 3. Members noted that the next meeting would be held on Thursday, 22 April 2004 at 10:45 am. The Bills Committee would continue to scrutinize Schedule 3 of the Bill.
- 4. There being no other business, the meeting ended at 10:30 am.
- 5. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
4 May 2004

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

**21st meeting on Thursday, 15 April 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000249	Chairman Administration	Welcoming and introductory remarks	
000250 - 001047	Chairman Administration ALA7	Briefing by the Administration on the major proposals in Schedule 3 of the Bill [CB(1)2434/02-03(03)]	
001048 - 001100	Chairman Administration	Briefing by the Administration on its response to written submissions on Schedule 3 of the Bill [CB(1)1504/03-04(08)]	
001101 - 001118	Chairman Administration	<u>General comments</u> The Hong Kong Institute of Company Secretaries supported the proposals in Schedule 3 of the Bill	
001119 -001911	Chairman Administration Ms Emily LAU ALA7 Ms Miriam LAU	<u>General comments</u> The Hong Kong Small and Medium was concerned about the impact of the proposed requirements on disclosure and annual returns on the operating cost of small and medium enterprises. The Administration advised that the operation of the Companies Registry was managed by the Companies Registry Trading Fund. The proposed fees relating to overseas companies were based on the actual cost of processing the documents.	Administration to take follow-up action set out in paragraph 2(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
001912 - 002016	Chairman Administration	<u>Section 1 of Schedule 3 - "Interpretation - place of business"</u> The Law Society of Hong Kong was concerned about the impact of the proposed removal of the element of share transfer office from the definition of "place of business". The Administration agreed to retain the phrase " <i>a share transfer or share registration office</i> " in the definition.	Administration to move CSAs on the definition of "place of business"
002017 - 002617	Chairman Administration Mr Albert HO	<u>Section 1 of Schedule 3 - "Interpretation - place of business"</u> Views of the Hong Kong Chinese Enterprises Association (HKCEA) and Linklaters Definition of " <i>place of business</i> " adopted in other jurisdictions [CB(1)1504/03-04(10)]	
002618 - 012355	Chairman Administration Mr Albert HO Ms Miriam LAU ALA7 Ms Emily LAU	<u>Section 14 of Schedule 3 - "Section 91 of the Ordinance substituted (Application of Part III to non-Hong Kong companies)"</u> Views of the Hong Kong Association of Banks on the proposed new arrangement for registration of a charge on the property which was brought into Hong Kong after the creation of the charge Arrangements relating to registration of charges for "overseas companies" or equivalent provisions adopted in other jurisdictions [CB(1)1504/03-04(10)], and recommendations of the Standing Committee on Company Law Reform	Administration to take follow-up actions set out in paragraphs 2(b) to 2(g) of the minutes
012356 - 012531	Chairman Administration Ms Emily LAU	<u>Sections 7, 20, 26, 31 and 35 of Schedule 3</u> Views of the Office of Privacy Commissioner for Personal Data, Hong Kong (PCO)	

Time marker	Speaker	Subject(s)	Action required
012532 - 013004	Chairman Administration ALA7	<u>Section 23 of Schedule 3 - <i>Inspection, production and evidence of documents kept by Registry</i></u> Views of PCO	Administration to move CSAs to amend proposed section 305 so that the purpose statement in proposed section 305(1A) would also cover searches in respect of mortgagees, liquidators etc who act in relation to a specified corporation.
013005 - 013107	Chairman Administration ALA7	<u>Section 26 of Schedule 3 - <i>Section substituted (Documents, etc. to be delivered to Registrar by companies that establish places of business in Hong Kong)</i></u> Views of the Hong Kong Society of Accountants (HKSA)	
013108 - 013522	Chairman Administration ALA7	<u>Sections 28 and 29 of Schedule 3</u> Views of HKSA	Administration to take follow-up action set out in paragraph 2(h) of the minutes
013523 - 013949	Chairman Administration Ms Emily LAU ALA7	<u>Section 35 of Schedule 3 - <i>Section substituted (Notice of commencement of liquidation and of appointment of liquidator)</i></u> Views of HKSA	
013950 - 014614	Chairman Administration Ms Emily LAU Mr Albert HO	<u>Section 38 of Schedule 3 - <i>Section substituted (Notices to be sent when non-Hong Kong companies cease to have places of business in Hong Kong)</i></u> Views of HKCEA and Linklaters The Bills Committee noted that penalty for failing to meet the 7-day notice requirement under proposed section 339 was a fine at level 5.	

Time marker	Speaker	Subject(s)	Action required
014615 - 015939	Chairman Administration Ms Emily LAU ALA7	<p>Briefing by the Administration on the comparison table between provisions in relation to overseas and incorporation procedures [CB(1)1504/03-04(10)]</p> <p>Ms Emily LAU enquired whether under proposed section 334 (<i>Annual return to be made by non-Hong Kong company</i>) non-Hong Kong companies would be required to file more information compared with the existing requirement and the relevant requirements in other jurisdictions. The Administration advised that the purpose of the proposed arrangement was to require non-Hong Kong companies to deliver consolidated annual returns and provide for the use of a specified form for that purpose. The proposed arrangement was largely modelled on the arrangement adopted in Australia. The only additional information required to be filed under the annual return when compared to the existing filing arrangement was the date of registration.</p>	
015940 - 020126	Chairman Administration Ms Emily LAU	Date of next meeting	