

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1701/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

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

**Minutes of the twenty-second meeting  
held on Thursday, 22 April 2004, at 10:45 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 Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon SIN Chung-kai  
Hon Emily LAU Wai-hing, JP  
Hon Henry WU King-cheong, BBS, JP

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

**Members absent** : Hon CHAN Kam-lam, JP  
Dr Hon Philip WONG Yu-hong, GBS

**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

Mr Alan CHONG  
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 Meeting with the Administration**

LC Paper No. CB(1)1566/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 15 April 2004

LC Paper No. CB(1)1566/03-04 (02) - List of issues requiring follow-up actions by the Administration on Schedule 3 of the Bill (Position as at 20 April 2004)

LC Paper No. CB(1)2504/02-03 (13) - Submission dated 22 September 2003 from the Hong Kong Institute of Company Secretaries

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| 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)1566/03-04 (03) - Administration's response dated 20 April 2004

LC Paper No. CB(1)1566/03-04 (04) - 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 (Revised)

1. The Bills Committee continued the scrutiny of Schedule 3 of the Bill (Amendments relating to overseas companies and incorporation procedures).

2. The following papers were tabled by the Administration at the meeting -

- (a) Draft Form NC1 - Application for Incorporation of a Company Limited by Shares; and
- (b) Draft Form NC1G - Application for Incorporation of a Company other than a Company Limited by Shares.

*(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)1603/03-04 on 23 April 2004.)*

3. The Administration undertook to consider and provide information on the following matters -

Proposed section 152FD - Saving for solicitors

- (a) to consider revising proposed section 152FD to extend the saving to cover any record which is or contains a confidential communication made under professional legal privilege for the purpose of obtaining or giving legal advice or assistance;

Fees relating to overseas companies

- (b) to provide figures of the past few years regarding the numbers of Hong Kong companies delivering annual returns for registration within different periods after the anniversary of registration/incorporation;

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

- (c) to consider revising the drafting of section 335(1) to make it clear that the situation specified under existing section 333A(2), i.e. a person registered as an authorized representative ceases to be able to act on behalf of the company whether by reason of death or incapacity or other unforeseen reason, should trigger the requirement on the company to register the change in the authorized representative under proposed section 335(1); and

Signature of memorandum - proposed section 6(2)

- (d) to provide information on the guidelines the Companies Registry plans to issue in respect of the manner in which the signature of a founder member in the memorandum delivered to the Company Registry for registration in the form of an electronic record should be authenticated.

Proposed section 14A - Incorporation form

4. The Bills Committee noted that under proposed section 14A(2)(i), where all the partners in a firm were joint secretaries, the name and principal office of the firm might be substituted for the particulars mentioned in subsections (i) and (ii) of section 14A(2)(i). The Administration advised that the provision of proposed section 14A(2)(i) was intended for administrative convenience. Legally, and the fact remained that, each partner of the firm was appointed in his personal capacity and jointly with other partners as the company secretary. Where one partner resigned as a partner in future, the company would have to notify the Registrar of Companies as this would be regarded as a change of company secretary. The Administration also confirmed that the public might ascertain the particulars of the partners of such a firm by making searches at the Business Registration Office.

5. The Chairman pointed out that it appeared that under both the existing and proposed section 158(4) of Companies Ordinance (Cap. 32) (CO), any change in the partners should be reported to the Registrar of Companies. However, if a change in the partners did not involve any change in the name and principal office of the firm, which were the only particulars in respect of the "joint secretaries" required to be stated in the incorporation form, the company concerned would reasonably believe that there was no need to notify the Registrar of the change in the partners. ALA7 also advised that as all the partners in such a firm were appointed as joint secretaries, any change in the partners was essentially a change of company secretary for the company concerned.

6. The Administration advised that proposed section 14A(2)(i) was modelled on existing section 158(3) of CO. The Hong Kong Institute of Company Secretaries had been consulted on the Bill and they had no comment on this issue. The Administration also advised that the situation where all the partners in a firm were joint secretaries was rare nowadays and that the existing arrangement under section 158(3) of CO had not given rise to particular problems.

7. Notwithstanding the ambiguity of the requirement to notify the Registrar of Companies upon change in the particulars of the company secretary in the case where all the partners in a firm were joint secretaries, taking note of the Administration's advice, the Bills Committee suggested and the Administration agreed that the issue should be examined in the overall restructuring and rewriting of CO rather than in the context of this Bill. The Clerk should make a remark on this issue in the Bills Committee's report.

## **II Any other business**

### Date of next meeting

8. Members noted that the next meeting would be held on Monday, 26 April 2004 at 8:30 am. The Bills Committee would continue to scrutinize Schedule 3 of the Bill.

9. There being no other business, the meeting ended at 12:47 pm.

10. 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**

**22nd meeting on Thursday, 22 April 2004, at 10:45 am  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000215	Chairman Administration	Welcoming and introductory remarks	
000216 - 000808	Chairman ALA7 Mr Albert HO Administration	<p><u>Schedule 4 of the Bill</u></p> <p>The Chairman pointed out that the saving provision under <b>proposed section 152FD</b> only covered records containing a legal privileged communication made by or to a solicitor in that capacity. She considered that the saving provision should be extended to cover records that contained a legal privileged communication made by or to a legal professional (who might not be a legal practitioner) for the purpose of obtaining or giving legal advice. The specified corporation in possession of such records should enjoy the privilege of not having to produce the records for inspection by a member of the specified corporation.</p> <p>In response to Mr Albert HO's enquiry, ALA7 advised that the terms "solicitor" and "counsel" were defined in section 3 of Interpretation and General Clauses Ordinance (Cap.1), but there were no definitions for the terms "legal representative" and "legal adviser" in the laws of Hong Kong.</p> <p>Mr Albert HO suggested that the saving provision might generally refer to communications made under professional legal privilege.</p>	Administration to take follow-up action set out in paragraph 3(a) of the minutes



Time marker	Speaker	Subject(s)	Action required
000216 - 000808 (Cont'd)		The Administration advised that <b>proposed section 152FD</b> was modelled on <b>existing section 152F</b> . It undertook to consider members' suggestion to extend the saving provision with reference to similar provisions in other ordinances.	
000809 - 000825	Chairman Administration	<u>Schedule 3 of the Bill</u> Briefing by the Administration on its follow-up actions on matters arising from the discussion at the meeting on 15 April 2004 [CB(1)1566/03-04(01)]	
000826 - 001907	Chairman Administration Ms Miriam LAU Mr Albert HO Ms Emily LAU	<u>Fees relating to overseas companies</u> [CB(1)1566/03-04(01)]	Administration to take follow-up action set out in paragraph 3(b) of the minutes
001908 - 002953	Chairman Administration Ms Miriam LAU Ms Emily LAU	<u>Registration of charges for overseas companies</u> [CB(1)1566/03-04(01)] The Administration would meet the Hong Kong Association of Banks (HKAB) on the proposed arrangement and revert to the Bills Committee later. The Bills Committee thus skipped this part of the paper.	

Time marker	Speaker	Subject(s)	Action required
002954 - 003915	Chairman Administration ALA7 Ms Miriam LAU	<p><u>Continuing obligation in respect of authorized representative, Return to be delivered to Registrar where documents, etc. altered [CB(1)1566/03-04(01)]</u></p> <p>ALA7 advised that in the existing Companies Ordinance (Cap. 32) (CO), the word "alteration" normally referred to changes in documents (for examples, the charter, statutes or memorandum). When referring to directors, reserve directors, secretary or joint secretary, the words "occurrence of any change in the company's directors, reserve directors, secretary or joint secretary" and "occurrence of any change in any of the particulars contained in the register" were used in CO.</p> <p>The Administration advised that the policy intent of <b>proposed section 335(1)</b> covered the situation when a person registered as the authorised representative or a director or secretary of an overseas company ceased to be able to act in that capacity.</p>	Administration to take follow-up action set out in paragraph 3(c) of the minutes
003916 - 004037	Chairman Mr Henry WU Ms Miriam LAU	<p><u>Schedule 4 of the Bill</u></p> <p>Extension of saving provisions under <b>proposed section 152FD</b> to cover all records containing a legal privileged communication.</p>	
004038 - 004950	Chairman ALA7 Administration	<p><u>Schedule 3 of the Bill</u></p> <p>Comparison table between provisions in relation to overseas companies and incorporation procedures [CB(1)1566/03-04(04)]</p> <p>ALA7 advised that according to the comparison table supplied by the Administration, while the provisions in existing CO were similar to the arrangements adopted in the United Kingdom (UK), the proposals in Schedule 3 of the Bill were similar to the arrangements adopted in Australia.</p>	

Time marker	Speaker	Subject(s)	Action required
004038 - 004950 (Cont'd)		<p>Regarding the submission of annual accounts by overseas companies, ALA7 referred to the proposal in the Bill that where the law of the place of incorporation did not impose a requirement to file accounts but the laws of any other jurisdictions where the non-Hong Kong company was registered as a company or the rules of any Stock Exchange or similar regulatory bodies in those jurisdictions imposed such a requirement, the company would be required to submit a certified copy of the latest published accounts of the company that complied with that law, and advised that this was a new requirement and was different from the requirement adopted in UK, Australia and Singapore.</p> <p>The Administration advised that the proposed arrangement was to enhance the disclosure requirements on overseas companies and to make the requirement more understandable to non-Hong Kong companies. It was similar to the arrangement under consideration in UK in the context of the overall review of the UK Company Act, in that an overseas company which was required by the law of the place of its incorporation or origin to publish its accounts should be required to deliver to the Registrar copies of the accounts.</p>	

Time marker	Speaker	Subject(s)	Action required
004038 - 004950 (Cont'd)		The Administration also advised that the proposed arrangement would remove the existing distinction between private and public companies for the purposes of filing of accounts, as the Administration considered that private companies should be subject to the same disclosure requirement as public companies. Moreover, in view of the special circumstances in Hong Kong that over 80% of the listed companies in Hong Kong were overseas companies, the Administration considered it desirable to extend the account filing requirement to catch those listed overseas companies which were not required by the law of the place of its incorporation or origin to publish annual accounts but were required to do so in any other jurisdictions where the company was registered as a company or the rules of any Stock Exchange or similar regulatory bodies in those jurisdictions.	
004951 - 005244	Chairman ALA7 Ms Miriam LAU Mr Albert HO	Administration's response to ALA7's letter [CB(1)1504/03-04(09)] [CB(1)1566/03-04(04)]	
005245 - 012130	Chairman ALA7 Dr Eric LI Ms Miriam LAU Mr Albert HO	<u>Proposed section 14A(2)(i)</u> The Administration undertook to examine this issue in the overall restructuring and rewriting of CO.	The Clerk to make a remark on this issue in the Bills Committee Report.
012131 - 012604	Chairman ALA7 Administration	<u>Proposed section 14A(3)</u> The Administration would move Committee Stage amendments (CSAs) to cater for the situation where the founder member was the sole member of the company.	Administration to move CSAs to sections 2(10) and 4(1)
012605 - 012648	Chairman ALA7	<u>Proposed section 91(4)(b)</u> The Bills Committee agreed to discuss this section later pending the result of the Administration's meeting with the HKAB.	

Time marker	Speaker	Subject(s)	Action required
012649 - 012733	Chairman ALA7	<u>Administration's response to the queries raised in paragraph 4 of ALA7's letter</u>  ALA7 said that taking note of the Administration's proposed CSAs, she had no further comments.	
012734 - 012819	Chairman ALA7	The Bills Committee proceeded to clause-by-clause examination of the Bill. The Bills Committee would scrutinize the English version of the Bill first.	
012820 - 013001	Chairman Administration ALA7	<u>Section 1 of Schedule 3 - Interpretation</u>	
013002 - 013137	Chairman Ms Miriam LAU Administration	<u>Section 2 of Schedule 3 - Mode of forming incorporated company</u>  ALA7 advised that "sign" was defined in section 3 of Interpretation and General Clauses Ordinance (Cap.1).	
013138 - 013305	Chairman ALA7 Ms Miriam LAU Dr Eric LI	<u>Section 3 of Schedule 3 - Requirements with respect to memorandum</u>	
013306 - 014012	Chairman Ms Miriam LAU Administration Dr Eric LI Ms Emily LAU	<u>Section 4 of Schedule 3 - Signature of memorandum</u>	Administration to take follow-up action set out in paragraph 3(d) of the minutes
014013 - 014038	Chairman	<u>Section 5 of Schedule 3 - Articles prescribing regulations for companies</u>	
014039 - 014106	Chairman	<u>Section 6 of Schedule 3 - Printing and signature of articles</u>	
014107 - 014917	Chairman Administration Ms Miriam LAU ALA7	<u>Section 7 of Schedule 3 - Section added</u>	
014918 - 015200	Chairman Administration ALA7 Ms Miriam LAU Dr Eric LI	<u>Section 8 of Schedule 3 - Section substituted</u>	

Time marker	Speaker	Subject(s)	Action required
015201 - 015220	Chairman	<u>Section 9 of Schedule 3 - Effect of registration</u>	
015221 - 015304	Chairman Ms Miriam LAU	<u>Section 10 of Schedule 3 - Conclusiveness of certificate of incorporation</u>	
015305 - 015315	Chairman	<u>Section 11 of Schedule 3 - Definition of member</u>	
015316 - 015339	Chairman	<u>Section 12 of Schedule 3 - Approval of company required for allotment of shares by directors</u>	
015340 - 015354	Chairman	<u>Section 13 of Schedule 3 - Subheading amended</u>	
015355 - 015421	Chairman	<u>Section 14 of Schedule 3 - Section substituted</u>  The Bills Committee would scrutinize this section later.	
015422 - 015644	Chairman Administration ALA7	<u>Section 15 of Schedule 3 - Section substituted</u>	
015645 - 020220	Chairman Administration ALA7 Ms Miriam LAU Dr Eric LI	<u>Section 16 of Schedule 3 - Publication of name of company</u>  The Bills Committee noted that the penalty for failing to comply with subsection (2A) of <b>proposed section 93(4)</b> was a fine at level 3 and a daily fine of \$300. Currently, no penalty was imposed for failure to comply with subsection (2A).	
020221 - 020334	Chairman Ms Emily LAU Ms Miriam LAU	Date of next meeting	