

立法會
Legislative Council

LC Paper No. CB(1)1801/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the twenty-third meeting
held on Monday, 26 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
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon SIN Chung-kai
- Non-Bills Committee Member
Hon Miriam LAU Kin-ye, 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
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

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

I Confirmation of minutes of meeting

LC Paper No. CB(1)1597/03-04 - Minutes of meeting on 14 April 2004

1. The minutes of the meeting held on 14 April 2004 were confirmed.

II Meeting with the Administration

LC Paper No. CB(1)1599/03-04 (01) - List of issues requiring follow-up actions by the Administration on Schedule 3 of the Bill (Position as at 23 April 2004)

LC Paper No. CB(3)733/02-03 - Bill gazetted on 13 June 2003

- LC Paper No. CB(1)2228/02-03 (05) - Marked-up copy of Schedule 3 and related consequential and other amendments in Schedule 5 of the Bill
- 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)

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

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

- (a) Draft Form N1 - Particulars of a Non-Hong Kong Company Registered in Hong Kong; and
- (b) Draft Form N3 - Annual Return of a Non-Hong Kong Company.

(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)1640/03-04 on 26 April 2004.)

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

Register of directors and secretaries - section 158

- (a) to check apart from the provision of existing section 333A(2) regarding "authorized representative", whether there is any existing or proposed provision requiring an oversea company to notify the Companies Registrar of a change in directors or secretary if a director or the secretary of the oversea company ceases to be able to act in that capacity by reason of death or incapacity or other unforeseen reason; and if there is no such provision, to consider whether there is a need to provide for such a notification requirement;
- (b) taking into account the notification requirement on oversea companies, to consider the need to revise proposed section 158(4) to make it clear that the situation where a director or the secretary of a Hong Kong company ceases to be able to act in that capacity, whether by reason of death or incapacity or other unforeseen reason, should trigger the requirement on the company to notify the change in the directors or secretary under proposed section 158(4);

Notice of commencement of liquidation and of appointment of liquidator - section 337A

- (c) to clarify the meaning of "commencement date of proceedings" under proposed section 337A(1)(a), particularly in the case of creditors' winding up;
- (d) to advise whether proposed section 337A is sufficient to cover the situation where a non-Hong Kong company is wound up voluntarily and no proceedings in respect of the winding up have commenced;
- (e) to consider whether the notification requirement on Hong Kong companies regarding the appointment of receivers or managers for the winding up of the companies should also apply to non-Hong Kong companies;
- (f) to consider whether the 14-day notice requirement under proposed section 337A(1) will give rise to problems in those cases where the commencement of winding up is relayed back to a date earlier than the time of the presentation of the petition for the winding up; and

Interpretation of Part XI - section 341

- (g) to consider whether the same definitions of "director", "shadow director" and "secretary" should be adopted for Hong Kong and non-Hong Kong companies, and hence to review the need and the drafting of the proposed definitions of "director" and "secretary" under section 341.

III Any other business

Date of next meeting

5. Members noted that the next meeting would be held on Thursday, 6 May 2004 at 10:45 am. The Bills Committee would continue to scrutinize Schedule 3 of the Bill.
6. There being no other business, the meeting ended at 10:40 am.
7. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
12 May 2004

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

**23rd meeting on Monday, 26 April 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000227	Chairman	Confirmation of minutes of meeting on 14 April 2004	
000228 - 000244	Chairman	The Bills Committee continued the clause-by-clause examination starting from section 17 of Schedule 3 of the Bill. The Bills Committee would scrutinize the English version first.	
000245 - 000400	Chairman	<u>Section 17 of Schedule 3 - <i>Power of company to keep branch register</i></u>	
000401 - 000740	Chairman Administration ALA7	<u>Section 18 of Schedule 3 - <i>Directors</i></u> In view of the commencement of the Companies (Amendment) Ordinance 2003 (the Amendment Ordinance), the Administration confirmed that Committee Stage amendments (CSAs) would be moved to amend section 153 and section 153A.	Administration to provide draft CSAs to sections 153 and 153A.
000741 - 000837	Chairman Administration ALA7	<u>Section 19 of Schedule 3 - <i>Secretary</i></u> As there would be CSAs to proposed section 154(1AA), the Bills Committee agreed to revisit this section when the draft CSAs were provided by the Administration.	

Time marker	Speaker	Subject(s)	Action required
000838 - 001622	Chairman Administration Mr Albert HO ALA7	<p><u>Section 20 of Schedule 3 - Register of directors and secretaries</u></p> <p>The Bills Committee requested the Administration to check whether there were different notification requirements on Hong Kong companies and non-Hong Kong companies to report a change in director or company secretary if a director or company secretary ceased to be able to act in that capacity by reason of death or incapacity or other unforeseen reasons.</p>	Administration to take follow-up actions set out in paragraphs 4(a) and 4(b) of the minutes
001623 - 001645	Chairman ALA7	<p><u>Section 21 of Schedule 3 - Interpretation</u></p>	
001646 - 001954	Chairman Mr Albert HO ALA7 Administration	<p><u>Section 22 of Schedule 3 - Registrar may strike defunct company off register</u></p> <p>Mr Albert HO enquired why "subscriber to the memorandum of association" was changed to "founder member" in proposed section 291(5).</p> <p>ALA7 advised the term "subscriber" was used in the relevant provisions in the United Kingdom (UK), Australia and Singapore. In general, "subscriber" referred to a person who applied shares of a company.</p> <p>The Administration advised that the main purpose of the change was to modernize the terminology. UK was the first country to initiate the change. The Administration also pointed out that UK was considering the proposal to replace " memorandum of association" by "constitution".</p>	

Time marker	Speaker	Subject(s)	Action required
001955 - 003709	Chairman Administration ALA7 Ms Miriam LAU Mr Albert HO	<p><u>Section 23 of Schedule 3 - <i>Inspection, production and evidence of documents kept by Register</i></u></p> <p><u><i>New section 305(1A)</i></u></p> <p>The Administration advised that section 305(1A) was added to state the purposes for which documents kept or maintained by the Companies Registrar (CR) might be made available for public inspection. In response to the comments of Office of the Privacy Commissioner for Personal Data, Hong Kong, CSAs would be introduced so that the purpose statement would cover searches in respect of mortgagees, liquidators etc. who acted in relation to a specified corporation.</p> <p>ALA7 advised that in UK, directors of a company might apply for a Confidentiality Order to prevent their home address appearing on public records.</p> <p>The Administration responded that the introduction of Confidentiality Order was unique in UK as many directors of major companies in UK and their family members were under threat of violence or intimidation. The Order will apply to individuals who could demonstrate that they and their family members might be at risk of violence or intimidation if their address is publicly available.</p> <p>On members' concern about enforcement against the use of the information other than for the specified purposes, the Administration advised that it was more appropriate to deal with the enforcement issue in the context of the Personal Data (Privacy) Ordinance.</p>	Administration to move CSAs to section 305(1A)

Time marker	Speaker	Subject(s)	Action required
001955 - 003709 (Cont'd)		<p><u>Section 305(1)(b)</u></p> <p>The Bills Committee agreed to revisit this section when CSAs made in the context of the Amendment Ordinance was provided by the Administration.</p>	
003710 - 003734	Chairman ALA7	<p><u>Section 24 of Schedule - Meaning of unregistered companies</u></p>	
003735 - 003748	Chairman	<p><u>Section 25 - Application of Part XI</u></p>	
003749 - 004727	Chairman Administration ALA7 Mr Albert HO Ms Miriam LAU Dr Eric LI	<p><u>Section 26 - Section added</u></p> <p>Ms Miriam LAU was concerned about the difficulties in implementing proposed section 333(3) as it was impossible for CR to know the incorporation requirements in all jurisdictions. The Administration advised that CR maintained details of the incorporation requirements in the legislation of those countries in which oversea companies registering under Part XI were most commonly incorporated. CR would obtain corresponding information from other jurisdictions, as necessary.</p>	
004728 - 005059	Chairman Administration ALA7	<p><u>Section 27 of Schedule 3 - Section added</u></p> <p>ALA7 advised that under the existing arrangement, a certificate of incorporation would only be issued to Hong Kong companies. Under proposed section 333AA, a certificate of registration would also be issued to non-Hong Kong companies upon registration of the non-Hong Kong companies.</p>	
005100 - 005435	Chairman Administration Mr Albert HO ALA7	<p><u>Section 28 of Schedule 3 - Section substituted</u></p> <p>Members noted that the requirement for a non-Hong Kong company to keep registered an authorized representative in Hong Kong after the non-Hong Kong company ceased to have a place of business in Hong Kong had been shortened from three years to one year.</p>	

Time marker	Speaker	Subject(s)	Action required
005436 - 005749	Chairman Administration ALA7	<p data-bbox="639 241 1123 315"><u>Section 29 of Schedule 3 - Section substituted</u></p> <p data-bbox="639 338 1182 763">The Bills Committee noted that under the proposed arrangement, "statement" was used to replace "statutory declaration" for the notification of termination. Furthermore, under proposed section 333B(2), an authorized representative might inform CR of the termination of his authorization while under the existing arrangement, only the company could make such notification.</p>	
005750 - 005829	Chairman Administration ALA7	<p data-bbox="639 795 1182 898"><u>Section 30 of Schedule 3 - Registrar to keep an index of directors of non-Hong Kong companies</u></p>	
005830 - 010656	Chairman Administration ALA7 Mr Albert HO	<p data-bbox="639 929 1123 1003"><u>Section 31 of Schedule 3 - Section added</u></p> <p data-bbox="639 1025 1171 1413">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 the purpose. The only additional information required to be filed when compared to the existing arrangement was the date of registration.</p> <p data-bbox="639 1435 1150 1585">The Chairman requested ALA7 to compare the existing and proposed requirements and inform the Bills Committee if there were differences.</p>	
010657 - 010930	Chairman Administration ALA7	<p data-bbox="639 1617 1123 1691"><u>Section 32 of Schedule 3 - Section substituted</u></p> <p data-bbox="639 1713 1139 1937">The Administration confirmed that there was no change in requirement under section 335. The 21-day requirement under proposed section 335(1) was originally set out in Companies (Forms) Regulations.</p>	

Time marker	Speaker	Subject(s)	Action required
010931 - 011359	Chairman Dr Eric LI Administration ALA7 Ms Miriam LAU	<u>Section 33 of Schedule 3 - Section substituted</u> Dr Eric LI advised that he supported the early implementation of the proposed amendments to section 336 regarding the filing of accounts of non-Hong Kong companies, as the proposed arrangement was in line with the practices advocated by the International Federation of Accountants.	
011400 - 011602	Chairman Ms Miriam LAU	Members noted that there was no requirement on non-Hong Kong companies to report changes in shareholders. Ms Miriam LAU considered it unsatisfactory that changes in shareholders of a Hong Kong company could only be reflected in its annual return. There should be an improved mechanism to require more timely reporting of changes in shareholders immediately so that an updated record of the company concerned would be available for public inspection. In view of the large number of companies in Hong Kong, Ms LAU said that such requirement might be confined to private companies only. The Bills Committee agreed that this issue should be examined in the overall restructuring and rewriting of the Company Ordinance.	The Clerk to make a remark on this issue in the Bills Committee Report
011603 - 011725	Chairman ALA7 Administration	<u>Section 34 of Schedule 3 - Obligation to state name of non-Hong Kong company, whether limited and place where incorporated</u>	

Time marker	Speaker	Subject(s)	Action required
011726 - 012750	Chairman Administration Ms Miriam LAU Dr Eric LI Mr Albert HO	<u>Section 35 of Schedule 3 - Section substituted</u> The Administration confirmed that the forms under section 337A had incorporated views of the Hong Kong Society of Accountants. Clarification on the notification requirements set out in section 337A.	Administration to take follow-up actions set out in paragraph 4(c) and 4(f) of the minutes
012751 - 013248	Chairman Administration ALA7	<u>Section 36 of Schedule 3 - Regulation of use of corporate names by non-Hong Kong companies in Hong Kong</u>	
013249 - 013409	Chairman Administration ALA7	<u>Section 37 of Schedule 3 - Service of documents on non-Hong Kong companies</u> Members noted that the 3-year requirement under section 338(2)(b)(ii) was reduced to 12 months.	
013410 - 013712	Chairman Administration ALA7 Mr Albert HO Dr Eric LI	<u>Section 38 of Schedule 3 - Section substituted</u> Members noted that in comparison with other notification requirements, a shorter notification period (7 days) was required under proposed section 339 if a non-Hong Kong company ceased to have a place of business in Hong Kong. The Bills Committee considered the notice period reasonable and found it clearer than the existing requirement where the expression "forthwith give notice" was used.	
013713 - 013828	Chairman Administration ALA7	<u>Section 39 of Schedule 3 - Section added</u> <u>Section 40 of Schedule 3 - Removal, etc. of names of non-Hong Kong companies from registrar</u>	
013829 - 013842	Chairman	<u>Section 41 of Schedule 3 - Penalties</u>	

Time marker	Speaker	Subject(s)	Action required
013843 - 014930	Chairman Administration ALA7 Dr Eric LI	<p><u>Section 42 of Schedule 3 - Section substituted</u></p> <p>The Administration confirmed that CSAs would be moved to this section, including amendment to "place of business" and introduction of "share registration" etc.</p> <p>The Bills Committee suggested that the Administration consider whether the same definitions of "director" and "secretary" should be adopted for Hong Kong companies and non-Hong Kong companies.</p> <p>The Administration confirmed that the policy intent was to include "shadow director" for certain provisions relating to non-Hong Kong companies. The Administration undertook to review the definitions of "director" and "secretary" in section 341.</p> <p>The Bills Committee agreed to revisit this issue.</p>	<p>Administration to move CSAs to section 341</p> <p>Administration to take follow-up actions set out in paragraph 4(g) of the minutes</p>
014931 - 015002	Chairman	<p><u>Section 43 of Schedule 3 - Subheading repealed</u></p> <p><u>Section 44 of Schedule 3 - Prohibition of partnerships with more than 20 members</u></p>	
015003 - 015120	Chairman Administration	<p><u>Section 45 of Schedule 3 - Power to amend requirements as to accounts, Schedules, tables, forms and fees</u></p> <p>Members noted that amendments to the Twenty-fourth Schedule would be subsidiary legislation subject to negative vetting of LegCo.</p>	
015121 - 015131	Chairman	<p><u>Section 46 of Schedule 3 - Power of the Chief Executive in Council to order company engaging in undesirable activities to be struck off</u></p>	
015132 - 015309	Chairman	<p><u>Section 47 - First Schedule amended</u></p>	
015310 - 015345	Chairman	<p><u>Section 48 - Table of Fees to be paid to the Registrar of Companies</u></p>	

Time marker	Speaker	Subject(s)	Action required
015346 - 015412	Chairman	<u>Section 49 - Punishment of offences under this Ordinance</u>	
015413 - 015723	Chairman Mr Albert HO Administration	<u>Section 50 - Twenty-fourth Schedule added</u> In response to Mr Albert HO's enquiry on why only local representative offices of banks were exempted from registrations under Part XI of the Companies Ordinance, the Administration pointed out that the Hong Kong Monetary Authority (HKMA) was not yet established when Part XI was introduced. As banks were now under sophisticated supervision by HKMA, the Administration considered it justified to exempt banks from Part XI. The Administration was prepared to include companies of other trade/industry in Twenty-fourth Schedule in the future.	
015724 - 015921	Chairman Administration	Date of next meeting	