

立法會
Legislative Council

LC Paper No. CB(1)1854/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the twenty-fourth meeting
held on Thursday, 6 May 2004, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon CHAN Kam-lam, 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 Albert HO Chun-yan
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

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 meetings

LC Paper No. CB(1)1598/03-04 - Minutes of meeting on 15 April 2004

LC Paper No. CB(1)1701/03-04 - Minutes of meeting on 22 April 2004

1. The minutes of the meetings held on 15 and 22 April 2004 were confirmed.

II Meeting with the Administration

LC Paper No. CB(1)1743/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 26 April 2004

- LC Paper No. CB(1)1702/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 22 April 2004
- LC Paper No. CB(1)1702/03-04 (02) - List of issues requiring follow-up actions by the Administration on Schedule 3 of the Bill (Position as at 4 May 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)
- 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)1603/03-04 (01) - Draft Form NC1 - Application for Incorporation of a Company Limited by Shares

LC Paper No. CB(1)1603/03-04 (02) - Draft Form NC1G - Application for Incorporation of a Company other than a Company Limited by Shares

LC Paper No. CB(1)1640/03-04 (01) - Draft Form N1 - Particulars of a Non-Hong Kong Company Registered in Hong Kong

LC Paper No. CB(1)1640/03-04 (02) - Draft Form N3 - Annual Return of a Non-Hong Kong Company

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

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

- (a) Administration's paper on follow-up actions arising from the discussion at the meeting on 26 April 2004 (*Chinese version*);
- (b) Proposed amendments to Schedule 3 and Part 3 of Schedule 5 to the Companies (Amendment) Bill 2003 (*English version*); and
- (c) Form M5 - Notification of Appointment of Receiver or Manager.

(*Post-meeting note:* The papers were circulated to members vide LC Paper No. CB(1)1745/03-04 on 7 May 2004.)

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

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

- (a) To clarify the policy intent of the provisions under sections 333A, 333B and 335 and to review the proposed amendments in respect of the registration and notification requirements and to discuss with the Hong Kong Society of Accountants the proposed amendments;

Notice of commencement of liquidation and of appointment of liquidator

- (b) To review the 14-day notice requirement under proposed section 337A with particular regard to members' concern that service of the petition for winding-up to the non-Hong Kong company concerned may not enable it to comply with the 14-day notice requirement. In this connection, the Administration is requested -

- (i) to check the respective arrangements adopted in Hong Kong and other major jurisdictions for serving the petition for winding-up on the company concerned; and
- (ii) to compare the notification requirement under proposed section 337A with those adopted in other major jurisdictions.

Notification requirement on non-Hong Kong companies regarding the appointment of receivers or managers

- (c) To clarify whether oversea companies are currently required to notify the Companies Registrar of the appointment of receivers or managers for the winding of the non-Hong Kong companies, and if so, to advise the relevant provisions and requirements.

Certified copies of documents required to be delivered under Part XI
Translations

- (d) With reference to the powers conferred on justices of the peace (JPs) under the Justices of the Peace Ordinance (Cap. 510), to check whether JPs are authorized to certify copies of documents and translations of documents under sections 3 and 6 of the Companies (Forms) Regulations.

III Any other business

Date of next meeting

- 5. Members noted that the next meeting would be held on Thursday, 13 May 2004 at 8:30 am. The Bills Committee would continue to scrutinize Schedule 3 of the Bill.
- 6. There being no other business, the meeting ended at 6:30 pm.
- 7. The index of proceedings of the meeting is at **Appendix**.

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

**24th meeting on Thursday, 6 May 2004, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000225	Chairman	Confirmation of minutes of meetings on 15 and 22 April 2004	
000226 - 000305	Chairman Administration	Briefing by the Administration on its response to follow-up actions arising from the discussion at the meeting on 22 April 2004 [CB(1)1702/03-04(01)]	
000306 - 000454	Chairman Administration	<u>Fees relating to overseas companies</u>	
000455 - 003652	Chairman Administration ALA7 Dr Eric LI Ms Miriam LAU	<p><u>Continuing obligation in respect of authorized representative</u> <u>Return to be delivered to Registrar where documents, etc. altered</u></p> <p>Members noted that the Hong Kong Society of Accountants (HKSA) had a new submission on provisions relating to the registration of the authorized representative of non-Hong Kong companies [CB(1)1702/03-04(03)].</p> <p>Members shared HKSA's concern that there might be a lacuna in the proposed provisions in respect of the appointment and registration of authorized representatives of non-Hong Kong companies. The Administration advised that the proposed arrangement was modelled on the relevant provisions adopted in Australia, and they undertook to review the proposed arrangement in view of HKSA's and members' concern.</p>	Administration to take follow-up action set out in paragraph 4(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
003653 - 004134	Chairman Administration Mr SIN Chung-kai ALA7 Ms Miriam LAU	<u>Signature of memorandum - proposed section 6(2)</u>	
004135 - 004208	Chairman Administration	Briefing by the Administration on its response to follow-up actions arising from the discussion at the meeting on 26 April 2004 [CB(1)1743/03-04(01)]	
004209 - 004720	Chairman Administration ALA7	<u>Register of directors and secretaries - section 158</u>	
004721 - 010907	Chairman Administration ALA7 Ms Miriam LAU Dr Eric LI	<u>Notice of commencement of liquidation and of appointment of liquidator - section 337A</u> Members were concerned that service of the petition for winding up on the non-Hong Kong company concerned might not enable it to comply with the 14-day notice requirement under proposed section 337A. The Administration pointed out that in the case of compulsory winding-up for Hong Kong companies, a copy of the winding-up petition would be served on the company concerned once the petition was presented to the Court. The Administration undertook to check the arrangements adopted in Hong Kong and other major jurisdictions.	Administration to take follow-up action set out in paragraph 4(b) of the minutes

Time marker	Speaker	Subject(s)	Action required
010908 - 011118	Chairman Administration Ms Miriam LAU	<p><u>Notification of appointment of receivers or managers</u></p> <p>The Administration advised that they would revise the response on members' concern as to whether the notification requirement on Hong Kong companies regarding the appointment of receivers or managers for the winding up of the companies should apply to non-Hong Kong companies, and they would revert to the Bills Committee on this issue later.</p>	Administration to take follow-up action set out in paragraph 4(c) of the minutes
011119 - 011409	Chairman Administration ALA7	<p><u>Interpretation of Part XI - section 341</u></p> <p>The Bills Committee noted the Administration's response on the definitions of "director" and secretary".</p>	
011410 - 012320	Chairman ALA7	<p>The Bills Committee noted ALA7's comments on the draft Form N1 (Particulars of a Non-Hong Kong Company Registered in Hong Kong) and draft Form N3 (Annual Return of a Non-Hong Kong Company) provided by the Administration.</p> <p>As regards draft Form N3, the Administration clarified that a non-Hong Kong was required to submit Form N3 to the Companies Registry (CR) under proposed section 334(1). Similar to the existing arrangement, if there was no alteration since the last return, the company concerned was only required to submit a simplified form (similar to the existing Form ARF1) under proposed section 334(5). The Administration would clearly specify the requirements in the general circulars of CR.</p>	

Time marker	Speaker	Subject(s)	Action required
012321 - 012614	Chairman Administration	The Bills Committee proceeded to the clause-by-clause examination of Part 3 of Schedule 5 of the Bill (<i>Consequential and other amendments arising from the amendments to the Companies Ordinance made by Schedule 3 to this Ordinance</i>)	
012615 - 012743	Chairman Administration	Specification of Public Offices <u>Section 1 of Part 3 of Schedule 5 - Schedule amended</u>	
012744 - 013045	Chairman ALA7 Dr Eric LI Ms Miriam LAU Administration	Companies (Forms) Regulations <u>Section 2 of Part 3 of Schedule 5 - Paragraph substituted</u> In response to Dr Eric LI's enquiry, the Administration undertook to check whether justices of the peace (JPs) were authorized to certify copies of documents under section 3 of the Companies (Forms) Regulations.	Administration to take follow-up action set out in paragraph 4(d) of the minutes
013046 - 013141	Chairman Administration ALA7	<u>Section 3 of Part 3 of Schedule 5 - Paragraphs repealed</u> The Administration advised that the 21-day requirement had been incorporated into proposed section 335(1) of the Companies Ordinance.	
013142 - 013844	Chairman Dr Eric LI Administration Ms Miriam LAU ALA7	<u>Section 4 of Part 3 of Schedule 5 - Paragraph substituted</u> In response to Dr Eric LI's enquiry, the Administration undertook to check whether JPs were authorized to certify translations of documents under section 6 of the Companies (Forms) Regulations.	Administration to take follow-up action set out in paragraph 4(d) of the minutes
013845 - 013902	Chairman Administration	Limited Partnership Ordinance <u>Section 5 of Part 3 of Schedule 5 - Definition and constitution of limited partnership</u>	

Time marker	Speaker	Subject(s)	Action required
013903 - 014132	Chairman Administration	Inland Revenue Ordinance <u>Section 6 of Part 3 of Schedule 5 - Treatment of losses after 1 April 1975</u> <u>Section 7 of Part 3 of Schedule 5 - Ascertainment of share of partnership profits or losses</u> <u>Section 8 of Part 3 of Schedule 5 - Section added</u> <u>Section 9 of Part 3 of Schedule 5 - Calculation of total income</u>	
014133 - 014158	Chairman Administration	Money Lenders Regulations <u>Section 10 of Part 3 of Schedule 5 - Licensing and exemption forms</u>	
014159 - 014222	Chairman	Merchant Shipping (registration) Ordinance <u>Section 11 of Part 3 of Schedule 5 - Registrable ships</u> <u>Section 12 of Part 3 of Schedule 5 - Notice of dissolution, etc. of body corporate owner or charterer</u>	
014223 - 014237	Chairman	Toys and Children's Products Safety Ordinance <u>Section 13 of Part 3 of Schedule 5 - Service of notices</u>	
014238 - 014257	Chairman	Occupational Retirement Schemes Ordinance <u>Section 14 of Part 3 of Schedule 5 - Notices</u>	
014258 - 014308	Chairman	Consumer Goods Safety Ordinance <u>Section 15 of Part 3 of Schedule 5 - Service of notices</u>	
014309 - 014348	Chairman	Mandatory Provident Fund Schemes Ordinance <u>Section 16 of Part 3 of Schedule 5 - Interpretation</u> <u>Section 17 of Part 3 of Schedule 5 - Approval of trustees</u>	

Time marker	Speaker	Subject(s)	Action required
014349 - 014411	Chairman	Mandatory Provident Fund Schemes (General) Regulation <u>Section 18 of Part 3 of Schedule 5 - What are assets held in Hong Kong for the purposes of this Regulation?</u> <u>Section 19 of Part 3 of Schedule 5 - Approved trustee to lodge trustee's return with Authority</u>	
014412 - 014416	Chairman	Mandatory Provident Fund Schemes (Exemption) Regulation <u>Section 20 of Part 3 of Schedule 5 - Minimum standards applicable to trustees, etc. of schemes</u>	
014417 - 014421	Chairman	Non-local Higher and Professional Education (Regulation) Ordinance <u>Section 21 of Part 3 of Schedule 5 - Notices</u>	
014422 - 014428	Chairman	Merchant Shipping (Local Vessels) Ordinance <u>Section 22 of Part 3 of Schedule 5 - Ownership of local vessels</u>	
014429 - 014548	Chairman	Securities and Futures Ordinance <u>Section 23 of Part 3 of Schedule 5 - Corporations to be licensed for carrying on regulated activities</u> <u>Section 24 of Part 3 of Schedule 5 - Client securities and collateral held by intermediaries and their associated entities</u> <u>Section 25 of Part 3 of Schedule 5 - Restriction on receiving or holding of client assets</u> <u>Section 26 of Part 3 of Schedule 5 - Interpretation of Part IX</u> <u>Section 27 of Part 3 of Schedule 5 - Service of notices, etc.</u> <u>Section 28 of Part 3 of Schedule 5 - Interpretation and general provisions</u> <u>Section 29 of Part 3 of Schedule 5 - Savings, transitional, consequential and related provisions, etc.</u>	

Time marker	Speaker	Subject(s)	Action required
014549 - 014611	Chairman	Securities and Futures (Client Securities) Rules <u>Section 30 of Part 3 of Schedule 5 - Interpretation</u> <u>Section 31 of Part 3 of Schedule 5 - Approval of custodians for safe custody of client securities and securities collateral</u>	
014612 - 014622	Chairman	Securities and Futures (Price Stabilizing) Rules <u>Section 32 of Part 3 of Schedule 5 - Interpretation</u>	
014623 - 014644	Chairman ALA7	Royal Bank of Scotland Ordinance <u>Section 33 of Part 3 of Schedule 5 - Preamble amended</u> <u>Section 34 of Part 3 of Schedule 5 - Interpretation</u>	
014645 - 015240	Chairman Ms Miriam LAU Dr Eric LI Clerk ALA7 Administration	<p>The Bills Committee completed the clause-by-clause examination of Schedule 3 and the related consequential amendments in Schedule 5 of the Bill except for those provisions requiring CSAs.</p> <p>The Bills Committee noted that the Administration had received some submissions in response to its consultation paper on the proposed Statutory Derivative Action. The Clerk would issue the submissions to Bills Committee members.</p> <p>Date of next meeting</p>	