

立法會
Legislative Council

LC Paper No. CB(1)2009/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the twenty-fifth meeting
held on Thursday, 13 May 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
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS, JP
- 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
- 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
- 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)1801/03-04 - Minutes of meeting on 26 April 2004

1. The minutes of the meeting held on 26 April 2004 were confirmed.

II Meeting with the Administration

Papers relating to Schedule 3 of the Bill

LC Paper No. CB(1)1804/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 6 May 2004

- LC Paper No. CB(1)1804/03-04 (02) - Administration's letter dated 29 April 2004 to the Hong Kong Association of Banks on the proposed concept of property being "brought into Hong Kong" in relation to the amendments to section 91 of the Companies Ordinance
- LC Paper No. CB(1)1804/03-04 (03) - The Hong Kong Association of Banks' response to the Administration's letter dated 29 April 2004
- LC Paper No. CB(1)1804/03-04 (04) - List of issues requiring follow-up actions by the Administration on Schedule 3 of the Bill (Position as at 12 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)1745/03-04 (01) - Administration's paper on proposed amendments to Schedule 3 and Part 3 of Schedule 5 to the Companies (Amendment) Bill 2003
- 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)

Papers relating to Schedule 4 of the Bill

- LC Paper No. CB(1)1613/03-04 (01) - Administration's consultation paper on Statutory Derivative Action
- LC Paper No. CB(1)1746/03-04 (01) - Submission from the Association of Chartered Certified Accountants
- LC Paper No. CB(1)1746/03-04 (02) - Submission from Mandatory Provident Fund Schemes Authority

- LC Paper No. CB(1)1746/03-04 (03) - Submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)1746/03-04 (04) - Submission from Securities and Futures Commission
- LC Paper No. CB(1)1746/03-04 (05) - Submission from Standing Committee on Company Law Reform
- LC Paper No. CB(1)1746/03-04 (06) - Submission from W H Lam & Company
- LC Paper No. CB(1)1746/03-04 (07) - Submission from Mr David Webb
- LC Paper No. CB(1)1770/03-04 (01) - Submission from Estate Agents Authority
- LC Paper No. CB(1)1770/03-04 (02) - Submission from the DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)
- LC Paper No. CB(1)1770/03-04 (03) - Submission from the Hong Kong Association of Banks
- LC Paper No. CB(1)1770/03-04 (04) - Submission from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)1770/03-04 (05) - Submission from the Hong Kong Mortgage Corporation Limited
- LC Paper No. CB(1)1770/03-04 (06) - Submission from the Law Society of Hong Kong
- LC Paper No. CB(1)1807/03-04 (01) - Submission from Consumer Council
- LC Paper No. CB(1)1807/03-04 (02) - Submission from Mr John Brewer

2. The Bills Committee continued the scrutiny of Schedule 3 of the Bill (Amendments relating to oversea companies and incorporation procedures). The Bills Committee also went through the submissions provided by 17 organizations/individuals in response to the Administration's Consultation Paper on the proposed Statutory Derivative Action under Schedule 4 of the Bill.

3. A submission dated 7 May 2004 from the Society of Chinese Accountants and Auditors in response to Administration's Consultation Paper on Statutory Derivative Action of the Bill was tabled at the meeting.

(Post-meeting note: The letter was circulated to members vide LC Paper No. CB(1)1822/03-04 on 13 May 2004.)

III Any other business

Date of next meeting

4. Members noted that the next meeting would be held on Thursday, 20 May 2004 at 10:45 am. The Bills Committee would scrutinize the draft Committee Stage amendments to Schedule 3 of the Bill at the next meeting.

5. There being no other business, the meeting ended at 10:30 am.

6. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
1 June 2004

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

**25th meeting on Thursday, 13 May 2004, at 8:30 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|------------------------------------|--|--|
| 000000 - 000138 | Chairman | Confirmation of minutes of meeting on 26 April 2004 | |
| 000139 - 000229 | Chairman Administration | Briefing by the Administration on its follow-up actions arising from the discussion at the meeting on 6 May 2004 [<i>CB(1)1804/03-04 (01)</i>] | |
| 000230 - 000744 | Chairman Administration ALA7 | <p><u>Continuing obligation in respect of authorized representative - Return to be delivered to Registrar where documents, etc. altered</u></p> <p>The Administration advised that its current thinking was to remove section 333A and include an obligation for non-Hong Kong companies to appoint a new authorized representative (AR) within one month after the previous AR ceased to act.</p> | Administration to move Committee Stage amendments (CSAs) to section 333A and, if necessary, other provisions relating to the appointment of AR |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|---|---|---|
| 000745 - 003535 | Chairman Administration Ms Miriam LAU Mr Albert HO Dr Eric LI | <p><u>Notice of commencement of liquidation and of appointment of liquidator</u></p> <p>In response to members' concern about the registration requirement under proposed section 337A for compulsory winding up, the Administration undertook to amend the section to the effect that a non-Hong Kong company should register with the Companies Registrar within a certain period (e.g. 14 days) after the date of commencement of any proceedings for the liquidation of the company, or after the service on the company of a notice of the commencement of the liquidation proceedings of the company.</p> | Administration to move CSAs to proposed section 337A |
| 003536 - 003619 | Chairman Administration | <u>Notification requirement on non-Hong Kong companies regarding the appointment of receivers and managers</u> | |
| 003620 - 003824 | Chairman Administration Dr Eric LI | <p><u>Certified copies of documents required to be delivered under Part XI</u></p> <p><u>Translations</u></p> | |
| 003825 - 005259 | Chairman Administration Ms Miriam LAU Mr Albert HO Dr Eric LI Ms Emily LAU | <p>Briefing by the Administration on its response to the concern raised by the Hong Kong Association of Banks (HKAB) in its letter dated 7 May 2004.</p> <p><i>[CB(1)1804/03-04(02)]</i></p> <p><i>[CB(1)1804/03-04(03)]</i></p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| 003825 - 005259 (Cont'd) | | The Administration advised that the proposed section 91 was modelled on the relevant provisions adopted in the United Kingdom (UK), but a review on these provisions was conducted in UK recently. In view of the latest development, the Administration would amend the proposed section to simplify the arrangement so that a non-Hong Kong company was only required to register charges on property in Hong Kong that were created or acquired by the company. The Administration was waiting for HKAB's comments on the proposed arrangement and the related CSAs. | Administration to move CSAs on section 91 |
| 005300 - 005659 | Chairman Ms Emily LAU ALA7 Administration | Members noted that the Administration was still preparing the proposed CSAs to Schedule 3 of the Bill. They therefore agreed to go through the submissions in response to Administration's Consultation Paper on Statutory Derivative Action (SDA). | |
| 005700 - 005915 | Chairman Administration Ms Emily LAU | Views of the Association of Chartered Certified Accountants (ACCA) [CB(1)1746/03-04(01)] Ms Emily LAU pointed out ACCA's comments that less than two weeks for the consultation process was not adequate given the importance of the proposed SDA. | |
| 005916 - 005924 | Chairman | Views of Mandatory Provident Fund Schemes Authority [CB(1)1746/03-04(02)] | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|---|--|-----------------|
| 005925 - 010029 | Chairman Administration | Views of Office of the Privacy Commissioner for Personal Data, Hong Kong (PCO) <i>[CB(1)1746/03-04(03)]</i> The Administration noted PCO's suggestion that there should be express provisions specifying the permitted purposes of use of information disclosed under proposed sections 168BF(1)(c) and (d), as in proposed sections 152FA to 152FE. | |
| 010030 - 011726 | Chairman Administration Ms Emily LAU Mr Albert HO Ms Miriam LAU | Views of Securities and Futures Commission <i>[CB(1)1746/03-04(04)]</i> The Chairman shared her experiences in a recent court case with members and pointed out that in practice, a shareholder might be required to obtain leave from the court to bring common law derivative action (CDA) against a company, and the onus of proof would lie upon the shareholder to establish a prima facie case for the action. She was also of the view that common law derivative action should not be abolished after the introduction of SDA. One of her observations was that SDA might not apply to cases involving multiple levels of reflective loss among group companies. | |
| 011727 - 011926 | Chairman Administration | Views of Standing Committee on Company Law Reform (SCCLR) <i>[CB(1)1746/03-04 (05)]</i> | |
| 011927 - 012123 | Chairman Ms Emily LAU Administration | Views of W H Lam & Company <i>[CB(1)1746/03-04 (06)]</i> | |
| 012124 - 012259 | Chairman Administration | Views of Mr David Webb <i>[CB(1)1746/03-04 (07)]</i> | |
| 012300 - 012305 | Chairman | Views of Estate Agents Authority <i>[CB(1)1770/03-04 (01)]</i> | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|---|---|------------------------|
| 012306 - 012312 | Chairman | Views of the DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) <i>[CB(1)1770/03-04 (02)]</i> | |
| 012313 - 012434 | Chairman Administration | Views of the Hong Kong Association of Banks <i>[CB(1)1770/03-04 (03)]</i> | |
| 012435 - 012550 | Chairman Administration | Views of the Hong Kong Institute of Company Secretaries <i>[CB(1)1770/03-04 (04)]</i> | |
| 012551 - 012655 | Chairman Administration | Views of the Hong Kong Mortgage Corporation Limited <i>[CB(1)1770/03-04 (05)]</i> | |
| 012656 - 012842 | Chairman Administration | Views of the Law Society of Hong Kong <i>[CB(1)1770/03-04 (06)]</i> | |
| 012843 - 013056 | Chairman Administration | Views of Consumer Council <i>[CB(1)1807/03-04 (01)]</i> | |
| 013057 - 013133 | Chairman Administration | Views of Mr John Brewer <i>[CB(1)1807/03-04 (02)]</i> | |
| 013134 - 013308 | Chairman Administration | Views of the Society of Chinese Accountants and Auditors <i>[CB(1)1822/03-04 (01)]</i> | |
| 013309 - 015915 | Chairman Mr Albert HO Ms Miriam LAU Ms Emily LAU ALA7 Dr Eric LI Administration | Members noted the diverse views expressed by individuals and organizations on the proposed SDA Ms Emily LAU was supportive of SCCLR's recommendation that the scope of SDA should be limited to grounds expressed in its Consultation Paper. With the limited scope, no leave requirement was required as the leave application process would in effect be a "trial within a trial". Ms Miriam LAU considered that the leave requirement for the commencement of SDA was necessary, but the threshold might be lowered if the scope was limited to the grounds expressed in the SCCLR's Consultation Paper. | |

| Time marker | Speaker | Subject(s) | Action required |
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| 013309 - 015915 (Cont'd) | | <p>Dr Eric LI also supported SCCLR's recommendations on the scope of SDA but he was concerned that it would not be easy to precisely prescribe the scope of the SDA in the drafting of the provisions. He also considered that CDA and SDA should co-exist but the shareholder concerned should not instigate CDA and SDA concurrently in respect of the same subject.</p> <p>With the co-existence of CDA, Mr Albert HO supported to limit the scope of SDA in line with SCCLR's recommendations.</p> <p>The Administration advised that SDA was a new mechanism, which had also been adopted in some other comparable jurisdictions. Noting that there was no objection to the introduction of SDA in Hong Kong, the Administration was prepared to revise the provisions to limit the scope of the proposed SDA with reference to the grounds expressed in SCCLR's Consultation Paper. A lower threshold would be adopted, and the leave application would be an inter-parte hearing. Furthermore, CDA would not be abolished after the introduction of SDA but the member would not be allowed to bring these two derivative actions concurrently for the same subject matter.</p> <p>The Chairman requested the Administration to consult all consultees on the revised CSAs.</p> | Administration to provide CSAs to provisions on the proposed SDA |
| 015916 - 020000 | Ms Emily LAU Chairman | Date of next meeting Outstanding matters take up by the Administration | |