

立法會
Legislative Council

LC Paper No. CB(1)2040/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the twenty-sixth meeting
held on Thursday, 20 May 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 Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS, JP
- Members absent** : Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
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

Mr Edward LAU
Secretary, Standing Committee on
Company Law Reform

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

Before the Bills Committee proceeded to the scrutiny of the Bill, the Chairman suggested and the Bills Committee agreed to invite Ms Miriam LAU to join the Bills Committee in view of her active participation in the deliberations of the Bills Committee. Ms LAU accepted the invitation.

I Confirmation of minutes of meeting

LC Paper No. CB(1)1854/03-04 - Minutes of meeting on 6 May 2004

2. The minutes of the meeting held on 6 May 2004 were confirmed.

II Meeting with the Administration

Papers relating to Schedule 3 of the Bill

- LC Paper No. CB(1)1867/03-04 (01) - List of issues requiring follow-up actions by the Administration on Schedule 3 of the Bill (Position as at 19 May 2004)
- LC Paper No. CB(1)185/03-04 (01) - Submission from Hong Kong Society of Accountants dated 27 October 2003 on Schedule 3 of the Bill
- LC Paper No. CB(1)1504/03-04 (07) - Administration's response to Hong Kong Society of Accountants's submission dated 27 October 2003
- LC Paper No. CB(1)1702/03-04 (03) - Submission from Hong Kong Society of Accountants dated 3 May 2004 on Schedule 3 of the Bill
- LC Paper No. CB(1)1867/03-04 (02) - Administration's response to Hong Kong Society of Accountants's submission dated 3 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)1867/03-04 (03) - Administration's response to the Hong Kong Association of Banks' letter dated 7 May 2004
- LC Paper No. CB(3)733/02-03 - Bill gazetted on 13 June 2003
- LC Paper No. CB(1)1867/03-04 (04) - Administration's paper on revised proposed amendments to Schedule 3 and Part 3 of Schedule 5 to the Companies (Amendment) Bill 2003

LC Paper No. CB(1)1867/03-04 (05) - Marked-up copy of revised proposed amendments to Schedule 3 and Part 3 of Schedule 5 to the Companies (Amendment) Bill 2003

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)1867/03-04 (06) - Summary of submissions in response to Administration's Consultation Paper on Statutory Derivative Action and the Administration's response

3. The Bills Committee continued the clause-by-clause examination of Schedule 3 of the Bill (Amendments relating to oversea companies and incorporation procedures) and the related Committee Stage amendments (CSAs).

4. The following papers were tabled at the meeting -

- (a) Marked-up copy of revised proposed amendments to Schedule 3 and Part 3 of Schedule 5 to the Companies (Amendment) Bill 2003 (*Chinese version*);
- (b) Letter dated 19 May 2004 from Hong Kong Society of Accountants on Schedule 3 of the Bill (*English version only*);
- (c) Letter dated 19 May 2004 from Assistant Legal Adviser 7 to the Administration on the proposed CSAs to Schedule 3 of the Bill; and
- (d) Draft CSAs relating to Statutory Derivative Action in Schedule 4.

(*Post-meeting note*: The papers were circulated to members vide LC Paper No. CB(1)1878/03-04 on 21 May 2004.)

5. The Administration undertook to consider and provide information on the following matter -

Prohibition of Partnerships with more than Twenty Members

To clarify the effect(s) of the proposed deletion of section 345 of the Companies Ordinance (Cap. 32) (section 44 of Schedule 3 of the Bill), in particular whether an existing partnership consisting of more than 20 persons and to which existing section 345(1) applies would be automatically legalized following the enactment of the proposed amendment, and hence the partnership concerned shall have the legal capacity to sue.

6. The Bills Committee completed the clause-by-clause examination of Schedule 3 of the Bill and the related consequential amendments in Schedule 5 of the Bill, together with the draft CSAs proposed by the Administration. The Administration was requested to refine the drafting of certain provisions, the details of which are set out in the index of proceedings at Appendix.

III Any other business

Date of next meeting

7. Members noted that the next meeting would be held on Saturday, 29 May 2004 at 9:45 am. The Bills Committee would discuss the proposed Statutory Derivative Action under Schedule 4 of the Bill. If there was time left, the Bills Committee would proceed to discuss the outstanding matters on Schedule 1 of the Bill.

8. There being no other business, the meeting ended at 1:00 pm.

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

Council Business Division 1
Legislative Council Secretariat
8 June 2004

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

**26th meeting on Thursday, 20 May 2004, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000402	Chairman Mr Albert HO Ms Emily LAU	Membership of Ms Miriam LAU	
000403 - 000418	Chairman	Confirmation of minutes of meetings on 6 May 2004	
000419 - 000653	Chairman Ms Emily LAU	Introductory remarks	
000654 - 000716	Chairman ALA7	The Bills Committee continued the clause-by-clause examination of the English version of Schedule 3 of the Bill and the related consequential amendments in Schedule 5 of the Bill, together with the draft Committee stage amendments (CSAs) proposed by the Administration [CB(1)1867/03-04(04)] [CB(1)1867/03-04(05)]	
000717 - 000817	Chairman ALA7	<u>Section 2 - Interpretation</u>	
000818 - 000834	Chairman	<u>Section 4 - Mode of forming incorporated company</u>	
000835 - 000903	Chairman ALA7	<u>Section 14A - Incorporation form</u>	
000904 - 001752	Chairman ALA7 Ms Miriam LAU Mr Henry WU Administration Mr Albert HO	<u>Section 85 - Entries of satisfaction and release of property from charge</u>	The Administration agreed to follow up with ALA7 on the use of wordings "的人 的人" in the Chinese version of proposed section 85(5)(a)(iii).

Time marker	Speaker	Subject(s)	Action required
001753 - 003622	Chairman Clerk Administration Ms Miriam LAU	<p><u>Section 91 - Application of Part III to non-Hong Kong companies</u></p> <p>The Administration advised that the Hong Kong Association of Banks (HKAB) basically accepted the proposed amendments to proposed section 91 and they were waiting for the formal reply from HKAB. [CB(1)1804/03-04(03)] [CB(1)1867/03-04(03)]</p> <p>The Bills Committee noted ALA7's comments on the proposed section 91(2) and accepted the current version proposed by the Administration.</p>	
003623 - 004400	Chairman Administration ALA7 Ms Miriam LAU	<p><u>Section 153 - Directors of companies other than private companies</u></p> <p>The Administration noted ALA7's comments on proposed section 153(2) and agreed to revise this section. The revised section 153(2) should read "<i>With effect from the date of incorporation of a company (not being a private company) mentioned in its certificate of incorporation, the first directors of the company are the persons named as directors in the incorporation form submitted in respect of the company pursuant to section 14A</i>".</p>	Administration to revise the draft CSAs
004401 - 004449	Chairman Administration ALA7	<p><u>Section 153A - Directors of private companies</u></p> <p>The Bills Committee noted that, similar to proposed section 153(2), the Administration would replace "<i>as such</i>" with "<i>as directors</i>" in proposed section 153A(2).</p>	Administration to revise the draft CSAs

Time marker	Speaker	Subject(s)	Action required
004450 - 005259	Chairman ALA7 Ms Miriam LAU	<p><u>Section 154 - Secretary</u></p> <p>The Bills Committee noted that the Administration would replace "<i>as such</i>" with "<i>as secretary</i>" in proposed section 154(1AA).</p> <p>The Bills Committee noted ALA7's concern that the proposed section 154(1AB) might fail to deal with the situation when partners of a firm changed between the date of submission of the incorporation form and the date of incorporation of the company. The Administration said that it was unlikely in practice for a firm to change its partners within the period (which was usually a few days) between submission of the form and its incorporation. The Bills Committee agreed to the amendments to section 154(1AB) and considered that the Companies Registry (CR) should take care of the possibility of these cases through suitable administrative measures.</p> <p>On Ms Miriam LAU's enquiry about the requirement to notify CR upon change in partners, the Chairman recapitulated the discussion at a previous meeting (22 April 2004) and advised that the Bills Committee had agreed that the issue should be examined in the overall restructuring and rewriting of the Companies Ordinance, instead of in the context of the Bill.</p>	Administration to revise the draft CSAs
005300 - 010117	Chairman Ms Miriam LAU Mr Henry WU Administration ALA7	<p><u>Section 158 - Register of directors and secretaries</u></p> <p>The Administration agreed to replace "<i>required by the form</i>" with "<i>required under section 158(2)</i>" in proposed section 158(4).</p>	Administration to revise the draft CSAs
010118 - 010214	Chairman Administration ALA7	<p><u>Section 305 - Inspection, production and evidence of documents kept by Registrar</u></p>	

Time marker	Speaker	Subject(s)	Action required
010215 - 010238	Chairman	<u>Section 333 - Documents, etc. to be delivered to Registrar by companies that establish places of business in Hong Kong</u>	
010239 - 012209	Chairman ALA7 Ms Miriam LAU Mr Albert HO	<p><u>Section 333A - Continuing obligation in respect of authorized representative</u></p> <p>The Bills Committee noted that the Hong Kong Society of Accountants had agreed to the proposed amendments to section 333A.</p> <p>In response to ALA7, the Administration confirmed that the 1-month period mentioned in proposed section 333A(2) would count from the expiration of the period set out in section 333B(4). The Administration agreed to make a cross reference to the 1-month period to section 333B(4), and replace the phrase "<i>first-mentioned person ceases to act</i>" with "<i>first-mentioned person ceases to be</i>".</p>	Administration to revise the draft CSAs
012210 - 012215	Chairman	<p><u>Section 334 - Annual return to be made by non-Hong Kong company</u></p> <p><u>Section 336 - Accounts of non-Hong Kong companies</u></p>	
012216 - 012236	Chairman	<u>Section 337 - Obligation to state name of non-Hong Kong company, whether limited and place where incorporated</u>	

Time marker	Speaker	Subject(s)	Action required
012237 - 013420	Chairman ALA7 Administration Mr Albert HO	<p><u>Section 337A - Notice of commencement of liquidation and of appointment of liquidator</u></p> <p>Noting that the practice or statutory requirement in regard to the service of notice of liquidation proceedings to a company might vary in different jurisdictions, the Bills Committee agreed to replace the phrase "<i>by virtue of which liquidation proceedings of the company are commenced</i>". The revised CSAs to section 337A(1) should read "<i>or within 14 days after the service on the company of notice of commencement of proceedings, whichever is the later,</i>".</p>	Administration to revise the draft CSAs
013421 - 013500	Chairman	<u>Section 341 - Interpretation of Part XI</u>	
013501 - 013512	Chairman ALA7	<u>Twelfth Schedule - Punishment of offences under this Ordinance</u>	
013513 - 013640	Chairman ALA7 Administration	<p><u>Companies (Forms) Regulations</u> <u>Section 3 - Certified copied of documents required to be delivered under Part XI</u></p> <p>The Administration advised that the proposed amendment to add "<i>professional</i>" before "<i>company secretary</i>" was made in response to the concern of the Hong Kong Institute of Company Secretaries (HKICS) that the company secretary referred to in this section should be qualified professional company secretary recognized by HKICS and/or other overseas professional bodies.</p>	

Time marker	Speaker	Subject(s)	Action required
013641 - 013656	Chairman	<p><u>Companies (Forms) Regulations</u> <u>Section 6 - Translations</u></p> <p><u>Inland Revenue Ordinance</u> <u>Section 22C - Transitional:</u> <u>partnerships consisting of more than 20 members</u></p> <p><u>Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation</u> <u>Section 2 - Interpretation</u> <u>Section 24 - Certification of ownership and other documents ceasing to have effect on death or dissolution of owner, etc.</u></p>	
013657 - 013711	Chairman	The Bills Committee completed the clause-by-clause examination of the English version of Schedule 3 of the Bill and related consequential amendments in Schedule 5 of the Bill, and then proceeded to the scrutiny of the Chinese version	
013712 - 015245	Chairman ALA7 Administration Mr Albert HO Ms Miriam LAU Clerk	<p>The Bills Committee went through the Chinese version of sections 1 to 42 of Schedule 3 of the Bill.</p> <p>The Administration accepted ALA7's comment on the drafting of section 158(4) and will revise CSAs accordingly.</p>	Administration to revise the draft CSAs
015246 - 020559	Chairman Administration Ms Miriam LAU Mr Albert HO ALA7	<p><u>Section 43 of Schedule 3 - Subheading repealed</u></p> <p><u>Section 44 of Schedule 4 - Prohibition of partnerships with more than 20 members</u></p> <p>The Chairman declared interest that she was dealing with a court case involving a partnership consisting of more than 20 persons.</p> <p>While confirming that the deletion of section 345 would not have any retrospective effect on existing partnerships, the Administration undertook to clarify the effect(s) of the proposed deletion of section 345 in the light of members' concerns.</p>	Administration to take follow-up action set out in paragraph 5 of the minutes

Time marker	Speaker	Subject(s)	Action required
020600 - 020624	Chairman ALA7	In response to the Chairman, ALA7 said that she had no comments on the technical drafting aspects of the Chinese version of sections 45 to 50 of Schedule 3 of the Bill and related CSAs, and the consequential amendments in Part 3 of Schedule 5 of the Bill.	
020625 - 020819	Chairman Administration	<p>The Bills Committee noted that the draft CSAs relating to the proposed Statutory Derivative Action (SDA) under Schedule 4 of the Bill had been ready for members' consideration. The Administration would issue the draft CSAs to individuals and organizations concerned for their consideration.</p> <p>The Bills Committee also noted that the Administration had prepared additional draft CSAs to Schedule 1 of the Bill.</p> <p>The Bills Committee agreed to discuss the proposed SDA at the next meeting. If there was time left, the Bills Committee would proceed to discuss the outstanding matters on Schedule 1.</p> <p>The Bills Committee also noted that the Administration would move CSAs to drop Schedule 2 of the Bill.</p>	