

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2373/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

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

**Minutes of the twenty-eighth meeting  
held on Thursday, 3 June 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 SIN Chung-kai  
Hon Emily LAU Wai-hing, 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 Miriam LAU Kin-ye, JP  
Hon Henry WU King-cheong, BBS, JP
- Public officers attending** : Financial Services and the Treasury Bureau  
  
Mrs Dorothy MA  
Principal Assistant Secretary for  
Financial Services and the Treasury  
(Financial Services) 1  
  
Ms Shirley LAM  
Principal Assistant Secretary for  
Financial Services and the Treasury  
(Financial Services) 4  
  
Miss Jenny CHOI  
Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 1

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 SILKSTONE  
Registry Solicitor

Mr Edward LAU  
Secretary, Standing Committee on  
Company Law Reform

Department of Justice

Mr John WILSON  
Consultant Counsel

Mr Allen LAI  
Senior Government Counsel

Ms Carmen CHU  
Senior Government Counsel

Mr Alan CHONG  
Government Counsel

**Attendance by invitation** : Securities and Futures Commission

Mr Ashley ALDER  
Executive Director

**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 Confirmation of minutes of meeting**

LC Paper No. CB(1)2009/03-04 - Minutes of meeting on 13 May 2004

The minutes of the meeting held on 13 May 2004 were confirmed.

**II Meeting with the Administration**

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

Outstanding matters on Schedule 1 of the Bill

LC Paper No. CB(1)1906/03-04 (01) - Letter dated 10 May 2004 from Ms Alice CHAN, Lecturer of Department of Professional Legal Education, University of Hong Kong regarding the proposed Seventeenth Schedule

LC Paper No. CB(1)1906/03-04 (02) - Administration's letter dated 19 May 2004 to Ms Alice CHAN, Lecturer of Department of Professional Legal Education, University of Hong Kong

LC Paper No. CB(1)1906/03-04 (03) - Administration's paper dated 20 May 2004 on "Additional amendments to Schedule 1"

LC Paper No. CB(1)1964/03-04 (06) - List of outstanding matters on Schedule 1 of the Bill

LC Paper No. CB(1)698/03-04 (01) - Administration's paper on offences relating to amendment of prospectuses

Outstanding matters on Schedule 3 of the Bill

- LC Paper No. CB(1)1922/03-04 (03) - Administration's paper on follow-up actions arising from the discussion at the meeting on 20 May 2004
- LC Paper No. CB(1)2013/03-04 (01) - The Administration's revised draft Committee Stage Amendments (CSAs) on Schedule 3 of the Bill as at 28 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(1)2013/03-04 (02) - The Hong Kong Association of Banks' response to the Administration's letter dated 18 May 2004
- LC Paper No. CB(1)2013/03-04 (03) - Administration's response to the Hong Kong Association of Banks' letter dated 19 May 2004

Papers relating to the Schedule 4 of the Bill

- LC Paper No. CB(1)1982/03-04 (01) - The Administration's revised draft CSAs on Schedule 4 of the Bill as at 27 May 2004
- LC Paper No. CB(1)1964/03-04 (02) - Letter dated 25 May 2004 from Assistant Legal Adviser 7 to the Administration on revised draft CSAs on SDA

- LC Paper No. CB(1)2013/03-04 (04) - Letter dated 31 May 2004 from the Law Society of Hong Kong
- LC Paper No. CB(1)1922/03-04 (02) - Submission dated 22 May 2004 from Mr David Webb
- LC Paper No. CB(1)1982/03-04 (03) - Administration's response to submission from Mr David Webb on 22 May 2004
- LC Paper No. CB(1)1962/03-04 (04) - Submission dated 25 May 2004 from the Securities and Futures Commission
- LC Paper No. CB(1)1982/03-04 (04) - Administration's response to Securities and Futures Commission on 25 May 2004
- LC Paper No. CB(1)1964/03-04 (03) - Submission dated 27 May 2004 from Mr John Brewer
- LC Paper No. CB(1)1982/03-04 (05) - Administration's response to Mr John Brewer on 27 May 2004
- LC Paper No. CB(1)1613/03-04 (01) - Administration's consultation paper on Statutory Derivative Action (SDA)
- LC Paper No. CB(1)1867/03-04 (06) - Summary of submissions in response to Administration's Consultation Paper on SDA and the Administration's response (Position as at 20 May 2004)
- LC Paper No. CB(1)1962/03-04 (01) - Submission dated 24 May 2004 from Hong Kong Bar Association
- LC Paper No. CB(1)1982/03-04 (02) - Administration's response to submission from the Hong Kong Bar Association on 25 May 2004
- LC Paper No. CB(1)1982/03-04 (06) - Submission dated 27 May 2004 from Mr Winston POON, QC

2. The Bills Committee firstly discussed the outstanding matters of Schedules 1 and 3 of the Bill, and then continued to discuss the proposed Statutory Derivative Action (SDA) and other outstanding matters under Schedule 4 of the Bill.

3. The following papers were tabled at the meeting -
  - (a) The Administration's revised draft Committee Stage amendments (CSAs) on Schedule 4 of the Bill as at 1 June 2004 (*English version only*); and
  - (b) Letter dated 2 June 2004 from Hong Kong Society of Accountants relating to the draft CSAs (as at 19 May 2004) on the proposed SDA (*English version only*);

*(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)2036/03-04 on 4 June 2004.)*

### **III Any other business**

#### Date of next meeting

4. Members noted that the next meeting would be held on Monday, 7 June 2004 at 2:30 pm. The Bills Committee would follow up the outstanding matters of Schedule 3 of the Bill, and then continue to discuss the proposed SDA and other outstanding matters under Schedule 4 of the Bill.
5. There being no other business, the meeting ended at 12:55 pm.
6. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
12 July 2004

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

**28<sup>th</sup> meeting on Thursday, 3 June 2004, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000212	Chairman	Confirmation of minutes of meeting on 13 May 2004	
000213 - 000316	Chairman Administration	<b>Briefing by the Administration on the additional amendments to Schedule 1 of the Bill</b>	
000317 - 000914	Chairman Administration ALA7	<p><u>Proposed new Seventeenth Schedule</u> [CB(1)1906/03-04 (01)] [CB(1)1906/03-04 (02)] [CB(1)1906/03-04 (03)]</p> <p>Referring to the version of paragraph 7(a) in Part 1 of the Seventeenth Schedule suggested by Ms Alice CHAN, University of Hong Kong, the Administration advised that the suggested version might result in inconsistency with the rest of the Companies Ordinance and the Bill in terms of drafting approach. Hence, the Administration did not adopt Ms CHAN's suggestion, but undertook to consider the possibility of comprehensive drafting improvement of various prospectus-related provisions at Phase III of the review on offers of shares and debentures.</p> <p>The Bills Committee accepted the proposed amendments. The Chairman requested the Administration to inform Ms CHAN of the final proposed version of section 7(a) in Part 1 of the Seventeenth Schedule.</p>	

Time marker	Speaker	Subject(s)	Action required
000915 - 001746	Chairman Administration ALA7	<p><u>Proposed sections 39A, 39B, 342CA and 342CB</u>  <i>[CB(1)698/03-04 (01)]</i>  <i>[CB(1)1906/03-04 (03)]</i></p> <p>The Bills Committee noted that under section 399 of the Securities and Futures Ordinance (SFO), the Securities and Futures Commission (SFC) might prepare and publish codes or guidelines in relation to any matter relating to any of the functions of SFC under any of the relevant provisions. Hence, proposed sections 39A(2) and (3), 39B(3) and (4), 342CA(2) and (3), and 342CB(3) and (4) could be dropped.</p> <p>ALA1 referred to the second part of section 399(6) of SFO that "..., but in any proceedings under this Ordinance before any court the code or guideline shall be admissable in evidence, and if ...." and invited the Administration to clarify the application of the provision. The Administration advised that it was a common rule of evidence that a non-statutory code or guideline published by a statutory body in relation to its regulatory functions shall be admissable in evidence before the court, though such fact would not form the basis of any prosecution. The provision in section 399(6) only sought to clarify this position in respect of proceedings taken under SFO. The common rule of evidence should however also apply to proceedings initiated under other ordinances.</p> <p>Bills Committee accepted the proposed amendments to sections 39A, 39B, 342CA and 342CB.</p>	
001747 - 002005	Chairman Administration	<p><b>The Bills Committee proceeded to the discussion on outstanding matters relating to Schedule 3 of the Bill</b></p>	



Time marker	Speaker	Subject(s)	Action required
002006 - 002256	Chairman Administration	Briefing by the Administration on follow-up actions arising from the discussion at the meeting on 20 May 2004 relating to prohibition of partnerships with more than 20 members (section 345 of the Companies Ordinance) <i>[CB(1)1922/03-04 (03)]</i>	
002257 - 005640	Chairman Administration	Briefing by the Administration on the new amendments to the revised draft Committee Stage amendments (CSAs) to Schedule 3 of the Bill <i>[CB(1)2013/03-04 (01)]</i>	
002445 - 002932	Chairman Administration ALA7	<u>New amendments to English version of sections 153, 153A, 154 and 158</u>  The Administration had incorporated members' suggested amendments to sections 153(2)(6), 153A(2), 154(1AA) and 158(4) in the revised CSAs.	
002933 - 005639	Chairman Administration ALA7 Mr Albert HO	<u>New amendments to English version of section 333A</u>  ALA7 pointed out the mismatch in the reporting periods stipulated in proposed sections 333A(2) and 335(1) (1 month vis-à-vis 21 days), and that the starting points for the reporting periods were also not clear.  Despite the Administration's explanations, members considered that the drafting of sections 333A(2) should be refined to avoid any hiatus in the registration requirements in respect of authorized representative and to make sure that the registration requirements under sections 333A(2), 333B(2) and 335(1) were clear and consistent with one another.  The Chairman requested the Administration to discuss with ALA7 and revise the drafting of both the English and Chinese versions of the relevant provisions accordingly.	Administration to revise section 333A and related provisions

Time marker	Speaker	Subject(s)	Action required
005640 - 010107	Chairman ALA7 Mr Albert HO	<p><u>New amendments to English and Chinese version of section 337A</u></p> <p>The Administration had incorporated members' suggested amendments to section 337A(1) in the revised draft CSAs.</p> <p>Members agreed to the amendments on the English and Chinese versions of section 337A(1) suggested by ALA1.</p>	
010108 - 010157	Chairman Administration	<p><u>New amendments to Chinese version of section 85</u></p> <p>The Administration had incorporated members' suggested amendments to section 85(5) in the revised draft CSAs.</p>	
010158 - 010705	Chairman Administration ALA7 Mr Albert HO	<p><u>New amendments to Chinese version of section 153</u></p> <p>The Bills Committee agreed to the Administration's suggestion to replace the term "公司註冊證書" with "註冊證書" in section 153(2).</p>	
010706 - 010842	Chairman Administration	<p><u>New amendments to Chinese version of sections 153A, 154 and 158</u></p> <p>The Administration had incorporated members' suggested amendments to sections 153A(2), 154 and 158(4) in the revised draft CSAs.</p>	
010843 - 011250	Chairman Mr Albert HO Administration Ms Emily LAU	<p>Mr Albert HO referred to the previous discussion on section 333A and suggested the Administration clearly specify that section 333A applied to the situations where an AR ceased to be able to act due to death or incapacity. The Administration undertook to consider Mr HO's suggestion.</p>	
011251 - 011653	Chairman Administration ALA7	<p>Briefing by the Administration on its response to the submission from the Hong Kong Association of Banks relating to section 91 [CB(1)2013/03-04 (02)] [CB(1)2013/03-04 (03)]</p>	

Time marker	Speaker	Subject(s)	Action required
011654 - 011716	Chairman Administration	Briefing by the Administration on the English version of the new amendments to the revised draft CSAs to Schedule 4 of the Bill (except for Part IVAA) <i>[CB(1)2036/03-04 (01) tabled at the meeting]</i>	
011717 - 001937	Chairman Administration ALA7	<u>New amendment to section 152FD</u> ALA7 advised that according to Halsbury's Laws of England, " <i>legal professional privilege</i> " was confined to " <i>the legal profession; it extends to barristers, solicitors, licensed conveyancers, recognized bodies and legal executives in their employ, whether in private practice or employed full-time as salaried legal advisers by government departments or by commercial concerns, provided they are acting in their capacity as legal advisers, to the Director of Public Prosecutions and to foreign legal advisers.</i> "	
011938 - 012040	Chairman Administration ALA7	<u>New amendment to section 168A(2)(b)</u> The Bills Committee noted that the Administration would replace the word "such person" with "any person" in section 168A(2)(b).	
012041 - 012059	Chairman Administration	<u>New amendment to section 168A(2C)</u>	
012100 - 012241	Chairman Administration	<u>New sections 168A(7) and 168A(8)</u>	

Time marker	Speaker	Subject(s)	Action required
012242 - 014356	Administration Chairman Ms Emily LAU ALA7 Mr Albert HO	<p><u>New amendments to section 350B(1)</u></p> <p>The Bills Committee noted that the Administration had amended subsection (g) and added new subsection (h) under section 350B(1). The Administration advised that the amendments sought to refine the provisions to better reflect the recommendations of the Standing Committee on Company Law Reform (<i>Paragraph 19.02 of Consultation Paper on proposals made in Phase I of the Review</i>).</p> <p>Members accepted subsection (g) but considered the scope of subsection (h) not clear. The Administration undertook to revise this subsection.</p>	Administration to revise section 350B(1)(h)
014357 - 014418	Chairman Administration	Briefing by the Administration on the English version of the new amendments relating to the proposed Statutory Derivative Action (SDA) [CB(1)2036/03-04 (01) tabled at the meeting]	
014419 - 014429	Chairman Administration	<u>New amendment to the heading of Part IVAA</u>	
014430 - 014624	Chairman Administration	<u>New amendment to section 168BAA</u>	
014625 - 015720	Chairman Administration Ms Emily LAU Mr Albert HO	<p><u>New amendment to section 168BB(3)</u></p> <p>The Administration advised that the drafting of section 168BB(3) had not been updated but it was prepared to delete section 168BB(3)(b) (<i>i.e. the applicant is acting in good faith</i>).</p> <p>Ms Emily LAU reiterated that she would not support the leave requirement for SDA as it would lead to "trial within a trial".</p> <p>Mr Albert HO noted that the thresholds for leave requirement under section 168BB(3) was different from those for the court to make orders about costs under section 168BG.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
015721 - 015734	Chairman Administration	<u>New amendment to section 168BB(4)</u>	
015735 - 015942	Chairman Administration ALA7	<u>New section 168BB(4A)</u>	
015943 - 020011	Chairman Administration	<u>New section 168BCA</u>	
020012 - 020134	Chairman Administration ALA7	As regards new sections 168BB(4A) and 168BCA, ALA7 pointed out that the proposed new sections only dealt with concurrent derivative actions taken by the same member. They did not apply to CDA and SDA on the same subject matter initiated by different applicants.  The Administration advised that in the latter situation, it would be up to the court to exercise its discretion as provided under relevant rules of the court to decide whether and how the parties should or should not proceed with their actions.	
020135 - 020246	Chairman Administration	<u>New amendment to section 168BF(1)(c)</u>	
020247 - 020320	Chairman Administration	<u>New amendment to section 168BF(5)</u>	
020321 - 020344	Chairman Administration	<u>New amendment to section 168BFA</u>	
020345 - 020405	Chairman Administration	<u>New amendment to section 168BG(1)</u>	
020406 - 020735	Chairman Clerk Mr Albert HO Ms Emily LAU	Date of next meeting	