

Bills Committee on Companies (Amendment) Bill 2003

List of issues requiring follow-up actions by the Administration on Schedule 3 of the Bill (*position as at 12 May 2004*)

Fees relating to overseas companies

Date of meeting	Issue	Outcome
15 April 2004	To provide a chart setting out the current and the proposed fees relating to overseas companies and the corresponding fees (including current and proposed fees) for Hong Kong companies.	LC Paper No. CB(1)1566/03-04(01) (<i>issued on 22 and 23 January 2004</i>)
22 April 2004	To provide figures of the past few years regarding the numbers of Hong Kong companies delivering annual returns for registration within different periods after the anniversary of registration/incorporation.	LC Paper No. CB(1)1702/03-04(01) (<i>issued on 4 May 2004</i>)

Signature of memorandum - proposed section 6(2)

Date of meeting	Issue	Outcome
22 April 2004	To provide information on the guidelines the Companies Registry plans to issue in respect of the manner in which the signature of a founder member in the memorandum delivered to the Company Registry for registration in the form of an electronic record should be authenticated.	LC Paper No. CB(1)1702/03-04(01) (<i>issued on 4 May 2004</i>)

Registration of charges for overseas companies

Date of meeting	Issue	Outcome
15 April 2004	(a) To clarify how far the proposed amendments in relation to registration of charges for overseas companies are based on the relevant recommendations of the Standing Committee on Company Law Reform; (b) To clarify the definition of "brought into Hong Kong" under proposed section 91 with illustrations in respect of the charges specified under section 80(2) of the Companies Ordinance, and to provide relevant common law regarding the interpretation of this expression;	LC Paper No. CB(1)1566/03-04(01) (<i>issued on 22 and 23 January 2004</i>)

Registration of charges for oversea companies (Cont'd)

Date of meeting	Issue	Outcome
15 April 2004 (Cont'd)	<p>(c) To confirm whether any evidence/supporting documents (including evidence of the date when the property subject to a charge was brought into Hong Kong) are required for registering a charge where the relevant property is brought into Hong Kong after the creation of the charge; how the proposed arrangement compares to that for the registration of charges for Hong Kong companies;</p> <p>(d) To clarify whether under proposed section 91, a non-Hong Kong company is obliged to register a charge if only part of the relevant property or only the title documents of the relevant property is brought into Hong Kong;</p> <p>(e) To review whether proposed section 91 is sufficient to deal with situations where the relevant properties are brought into and out of Hong Kong from time to time and in-between these movements remain in Hong Kong for different periods of time; and</p> <p>(f) To meet with the Hong Kong Association of Banks and the Law Society of Hong Kong to discuss the proposed amendments in relation to registration of charges for oversea companies.</p>	LC Paper No. CB(1)1566/03-04(01) (issued on 22 and 23 January 2004)

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

Date of meeting	Issue	Outcome
15 April 2004	To review whether proposed section 335(1) adequately covers the situation specified under existing section 333A(2), which is proposed to be deleted.	LC Paper No. CB(1)1566/03-04(01) (issued on 22 and 23 January 2004)

Continuing obligation in respect of authorized representative (Cont'd)

Return to be delivered to Registrar where documents, etc. altered (Cont'd)

Date of meeting	Issue	Outcome
22 April 2004	To consider revising the drafting of section 335(1) to make it clear that the situation specified under existing section 333A(2), i.e. a person registered as an authorized representative ceases to be able to act on behalf of the company whether by reason of death or incapacity or other unforeseen reason, should trigger the requirement on the company to register the change in the authorized representative under proposed section 335(1) .	LC Paper No. CB(1)1702/03-04(01) <i>(issued on 4 May 2004)</i>
6 May 2004	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.	Reply awaited

Register of directors and secretaries - section 158

Date of meeting	Issue	Outcome
26 April 2004	(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; and	LC Paper No. CB(1)1743/03-04(01) <i>(issued on 6 and 7 May 2004)</i>

Register of directors and secretaries - section 158 (Cont'd)

Date of meeting	Issue	Outcome
26 April 2004 (Cont'd)	(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) .	LC Paper No. CB(1)1743/03-04(01) (issued on 6 and 7 May 2004)

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

Date of meeting	Issue	Outcome
26 April 2004	(a) To clarify the meaning of "commencement date of proceedings" under proposed section 337A(1)(a) , particularly in the case of creditors' winding up;	LC Paper No. CB(1)1743/03-04(01) (issued on 6 and 7 May 2004)
	(b) 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;	
	(c) 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; and	At the meeting held on 6 May 2004, the Administration undertook 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. Reply awaited

Notice of commencement of liquidation and of appointment of liquidator - section 337A
(Cont'd)

Date of meeting	Issue	Outcome
26 April 2004 (Cont'd)	(d) 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.	LC Paper No. CB(1)1743/03-04(01) (issued on 6 and 7 May 2004)
6 May 2004	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.	Reply awaited

Interpretation of Part XI - section 341

Date of meeting	Issue	Outcome
26 April 2004	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 .	LC Paper No. CB(1)1743/03-04(01) (issued on 6 and 7 May 2004)

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

Date of meeting	Issue	Outcome
6 May 2004	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.	Reply awaited

Council Business Division 1
Legislative Council Secretariat
12 May 2004