

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1490/04-05  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/04

**Bills Committee on Companies (Amendment) Bill 2004**

**Minutes of the eighth meeting held on  
Tuesday, 26 April 2005, at 10:45 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Albert HO Chun-yan  
Hon CHAN Kam-lam, JP  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon TAM Heung-man
- Members absent** : Dr Hon LUI Ming-wah, JP  
Hon SIN Chung-kai, JP  
Hon Abraham SHEK Lai-him, JP  
Hon CHIM Pui-chung
- Public officers attending** : Miss Emma LAU  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)
- Mr Alan LO  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)
- Mr Jackie LIU  
Assistant Secretary for Financial Services and the Treasury  
(Financial Services)

Mr K F CHENG  
Senior Assistant Law Draftsman  
Department of Justice

Ms Beverly YAN  
Senior Government Counsel  
Department of Justice

Mr Allen LAI  
Senior Government Counsel  
Department of Justice

**Attendance by invitation** : Hong Kong Institute of Certified Public Accountants

Mr Roger BEST  
Immediate Past President

Mr Paul F Winkelmann  
Chairman, Financial Accounting Standards Committee

Ms Elsa HO  
Assistant Director (Financial Reporting)

**Clerk in attendance** : Miss Salumi CHAN  
Chief Council Secretary (1)5

**Staff in attendance** : Miss Anita HO  
Assistant Legal Adviser 2

Ms Connie SZETO  
Senior Council Secretary (1)4

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- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)1337/04-05) — Minutes of seventh meeting held on 7 April 2005)

The minutes of the meeting held on 7 April 2005 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)825/04-05(02)) — Paper provided by the Administration on “Follow-up actions arising from the discussion at the meeting on 13 January 2005”
- LC Paper No. CB(1)681/04-05(02) — Administration’s response to the submissions from the Company & Financial Law Committee of The Law Society of Hong Kong and Linklaters
- LC Paper No. CB(1)1353/04-05(01) — “Follow-up to the seventh meeting on 7 April 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(3)41/04-05 — The Bill
- LC Paper No. CB(1)161/04-05(01) — Marked-up copy of the Companies (Amendment) Bill 2004
- LC Paper No. CB(1)1353/04-05(02) — Draft Committee Stage amendments proposed by the Administration
- LC Paper No. CB(1)1353/04-05(03) — “Summary of amendments to individual clauses of the Bill proposed by the Bills Committee, Administration or organizations (Position as at 21 April 2005)” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)668/04-05(05) — “Proposed work plan” prepared by the Legislative Council Secretariat)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

Admin

3. At the request of the Bills Committee, the Administration agreed to take the following actions:

- (a) Impact of the Bill on the asset-securitization market in Hong Kong  
The Administration undertook to endeavour to present the following information to the Bills Committee at the next meeting on 13 May 2005 -
- (i) Outcome of the Administration’s re-assessment of the impact of the Bill on the asset-securitization market in Hong Kong; and
  - (ii) The information and written responses requested by members at the meeting on 7 April 2005 (i.e. item 1 of LC Paper No. CB(1)1353/04-05(01)).
- (b) Section 2(5) of the Companies Ordinance (CO) and sections 4(c) and 7(c) of the proposed 23<sup>rd</sup> Schedule to CO  
The Administration agreed to propose Committee Stage amendments (CSAs) to delete the words “or concurrence” in the English text of section 2(5) and relevant provisions of CO (e.g. sections 4(c) and 7(c) of the proposed 23<sup>rd</sup> Schedule to CO) to achieve consistency with the Chinese text of the provisions.
- (c) Section 2(1)(b) of the proposed 23<sup>rd</sup> Schedule to CO  
Given that the right to exercise a dominant influence over a subsidiary undertaking was set out in both sections 2(1)(b) and 5 of the proposed 23<sup>rd</sup> Schedule to CO, a member suggested that reference to section 5 be made in section 2(1)(b), such as by adding “Subject to section 5” at the beginning of section 2(1)(b). The Administration agreed to consider the suggestion.
- (d) Section 8 of the proposed 23<sup>rd</sup> Schedule to CO  
The Administration was requested to take the following actions:
- (i) To explain the purpose(s) of section 8 of the proposed 23<sup>rd</sup> Schedule to CO;
  - (ii) To explain the reasons for the different treatments of rights under

subsections (a) and (b) of section 8;

- (iii) To review whether the drafting of section 8 should follow that of the relevant provisions of the UK Companies Act 1985; and
- (iv) To provide copies of the relevant provisions of the UK Companies Act 1985 on which section 8 was modelled.

Work plan

4. Members noted the Administration's proposal that the Second Reading debate on the Bill be resumed within the current session, i.e. at the Council meeting on 6 July 2005. To enable the Bills Committee to complete scrutiny of the Bill and report the outcome of its deliberations to the House Committee in mid-June 2005, members agreed to schedule two additional meetings with details as follows:

<u>Date</u>	<u>Time</u>
23 May 2005 (Monday)	8:30 am - 10:30 am
7 June 2005 (Tuesday)	4:30 pm - 6:30 pm

Date of next meeting

5. The Chairman reminded members that the next meeting of the Bills Committee would be held on Friday, 13 May 2005, at 8:30 am.

**III. Any other business**

6. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
10 May 2005

**Proceedings of the eighth meeting of the  
Bills Committee on Companies (Amendment) Bill 2004  
on Tuesday, 26 April 2005, at 10:45 am  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000-000104	Chairman	Confirmation of minutes of meeting on 7 April 2005	
000105-000542	Chairman Administration	<u>Section 128 of the Companies Ordinance (CO)</u> (Paragraphs 16 to 19 of LC Paper No. CB(1)825/04-05(02))  Briefing by the Administration	
000543-000747	Administration Chairman	<u>Administration's responses to submissions from the Company &amp; Financial Law Committee of the Law Society of Hong Kong (Law Soc) and Linklaters</u> (LC Paper No. CB(1)681/04-05(02))  Briefing by the Administration on its written responses to the general comments made in the two submissions	
000748-000818	Chairman Administration	<u>Impact of the Bill on the assess-securitization market in Hong Kong</u> (LC Paper No. CB(1)1353/04-05(01))  Administration's undertaking to endeavour to present the following information to the Bills	Administration to take action under paragraph 3(a) of

Time marker	Speaker	Subject(s)	Action Required
		<p>Committee at the next meeting on 13 May 2005 -</p> <p>(a) Outcome of the Administration's re-assessment of the impact of the Bill on the asset-securitization market in Hong Kong; and</p> <p>(b) The information and written responses requested by members at the meeting on 7 April 2005 (i.e. item 1 of LC Paper No. CB(1)1353/04-05(01))</p>	the minutes
000819-001154	Chairman	<p><u>Work plan</u> (LC Paper No. CB(1)668/04-05(05))</p> <p>Members' agreement to schedule two additional meetings on 23 May and 7 June 2005, at 8:30 am and 4:30 pm respectively</p>	
001155-002515	<p>Chairman Administration Assistant Legal Adviser 2 (ALA2) Mr Ronny TONG</p>	<p><u>Clause-by-clause examination of the Bill</u> (LC Paper Nos. CB(3)41/04-05, CB(1)161/04-05(01), CB(1)1353/04-05(02) and CB(1)1353/04-05(03))</p> <p><u>Clause 1</u></p> <p><u>Proposed new clause 1A (Chinese text only)</u></p> <p>(a) Briefing by the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
		(b) Administration’s undertaking to propose Committee Stage amendments (CSAs) to delete the words “or concurrence” in the English text of section 2(5) and relevant provisions of CO to achieve consistency with the Chinese text of the provisions	Administration to take action under paragraph 3(b) of the minutes
002516-003327	Administration Chairman ALA2	<u>Clause 2</u>  (a) Briefing by the Administration  (b) Members’ agreement with the draft proposed CSAs to the proposed new section 2B(2) and (3) of CO  (c) Administration’s response to the comments made by the Law Soc on the proposed new section 2B(4) of CO as set out in LC Paper No. CB(1)1353/04-05(03)  (d) Future amendments to the proposed new section 2B(3) of CO as provided under section 2B(4)  (e) Whether the proposed new section 2B(4) might have the effect of empowering the Secretary for Financial Services and the Treasury to amend the application of this Bill by subsidiary legislation	



Time marker	Speaker	Subject(s)	Action Required
		(f) Whether reference to “a Schedule” should be added in the proposed new section 2B(2) of CO	
003328-005606	Chairman Mr Ronny TONG Administration Mr Albert HO ALA2	<p><u>Clause 18</u></p> <p><u>Section 1 of the proposed 23<sup>rd</sup> Schedule to CO</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Members’ agreement with the proposed CSAs to the definitions of “shares” and “undertaking”</p> <p>(c) Administration’s responses to the comments made by members, the Legal Adviser to the Bills Committee and the Association of International Accountants (Hong Kong Branch) as set out in LC Paper No. CB(1)1353/04-05(03)</p> <p>(d) Whether reference to the definition of “shares” in the proposed 23<sup>rd</sup> Schedule should be made in the definition of “share” in section 2 of CO</p> <p>(e) Example quoted by the Administration to illustrate the scenario under item (b) of the definition of “shares” in the proposed 23<sup>rd</sup> Schedule</p>	

Time marker	Speaker	Subject(s)	Action Required
005607-013028	Administration Mr Albert HO ALA2 Mr Ronny TONG Hong Kong Institute of Certified Public Accountants (HKICPA)	<p><u>Sections 2 and 5 of the proposed 23<sup>rd</sup> Schedule to CO</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Members' agreement with the draft proposed CSAs</p> <p>(c) Existing tests provided in section 2(4) to (7) of CO for determining parent-subsidiary relationship between entities</p> <p>(d) Why the right of controlling more than half of the voting right of a entity by another entity was adopted as a test for determining the parent-subsidiary relationship between entities in section 2(4)(a)(ii) of CO</p> <p>(e) The Administration's advice that the criteria for determining the parent-subsidiary relationship between entities set out in the existing section 2(4) to (7) of CO were in line with the International Accounting Standards</p> <p>(f) A member's suggestion that reference to section 5 be made in section 2(1)(b) of the proposed 23<sup>rd</sup> Schedule, such as by adding "Subject to section 5" at the beginning of section 2(1)(b), given that the right to exercise a dominant</p>	<p>Administration to consider the suggestion under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>influence over a subsidiary undertaking was set out in both provisions</p> <p>(g) HKICPA’s advice that the criteria set out in existing section 2(4) of CO referred to “legal right” to exercise control over a subsidiary by a parent entity rather than “de facto control”</p> <p>(h) HKICPA’s elaboration on the difference between the legal right to exercise dominant influence and the actual exercise of the power to control on a day-to-day basis</p> <p>(i) Administration’s responses to the comments made by The Association of Chartered Certified Accountants and Linklaters on section 2 as set out in LC Paper No. CB(1)1353/04-05(03)</p> <p>(j) Financial reporting of a “jointly controlled entity”</p>	
013029-013959	Chairman Administration	<p><u>Sections 3, 4 and 5 of the proposed 23<sup>rd</sup> Schedule to CO</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Members’ agreement with the draft proposed CSAs</p> <p>(c) Administration’s response to the comments made by Law</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Soc on section 5(b)(ii) as set out in LC Paper No. CB(1)1353/04-05(03)</p> <p>(d) Administration's undertaking to propose CSAs to delete the word "or concurrence" in the English text of section 4(c) to achieve consistency with the Chinese text of the provision</p>	<p>Administration to take action under paragraph 3(b) of the minutes</p>
014000-014511	Chairman Administration	<p><u>Sections 2 and 3 of the proposed 23<sup>rd</sup> Schedule</u></p> <p>(a) Administration's responses to the comments made by members and the Legal Adviser to the Bills Committee as set out in LC Paper No. CB(1)1353/04-05(03)</p> <p>(b) Meanings of the terms "voting rights" in the proposed 23<sup>rd</sup> Schedule and "voting power" in the existing section 2 of CO</p>	
014512-014743	Chairman Administration	<p><u>Section 6 of the proposed 23<sup>rd</sup> Schedule</u></p> <p>Briefing by the Administration</p>	
014744-015133	Chairman Administration	<p><u>Section 7 of the proposed 23<sup>rd</sup> Schedule</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Administration's undertaking to propose CSAs to delete the</p>	<p>Administration to take action under</p>

Time marker	Speaker	Subject(s)	Action Required
		words “or concurrence” in the English text of section 7(c) to achieve consistency with the Chinese text of the provision	paragraph 3(b) of the minutes
015134-015819	Chairman Administration Mr Ronny TONG	<p><u>Section 8 of the proposed 23<sup>rd</sup> Schedule</u></p> <p>(a) Briefing by the Administration</p> <p>(b) Application and drafting of section 8</p> <p>(c) Request for the Administration to take the following actions -</p> <p>(i) To explain the purpose(s) of section 8 of the proposed 23<sup>rd</sup> Schedule to CO;</p> <p>(ii) To explain the reasons for the different treatments of rights under subsections (a) and (b) of section 8;</p> <p>(iii) To review whether the drafting of section 8 should follow that of the relevant provisions of the UK Companies Act 1985; and</p> <p>(iv) To provide copies of the relevant provisions of the UK Companies Act 1985 on which section 8 was</p>	Administration to take action under paragraph 3(d) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		modelled.	
015820-015830	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
10 May 2005