

立法會
Legislative Council

LC Paper No. CB(1)315/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/04

Bills Committee on Companies (Amendment) Bill 2004

**Minutes of the first meeting held on
Monday, 8 November 2004, 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
Dr Hon LUI Ming-wah, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members absent** : Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
- 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

Mr Allen LAI
Senior Government Counsel
Department of Justice

Attendance by invitation : Hong Kong Institute of Certified Public Accountants

Mr Paul F Winkelmann
Chairman, Financial Accounting Standards Committee

Mr Simon RILEY
Technical Director (Financial Reporting)

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

Staff in attendance : Miss Mona LAI
Assistant Legal Adviser 7

Ms Connie SZETO
Senior Council Secretary (1)4

I. Election of Chairman

Ms Audrey EU was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(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

Ref: C2/1/57/2(04) Pt. 5

— The Legislative Council Brief

on “Companies (Amendment) Bill 2004” issued by the Financial Services and the Treasury Bureau

- LC Paper No. LS2/04-05 — The Legal Service Division Report
- LC Paper No. CB(1)162/04-05(01) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)162/04-05(02) — Letter dated 1 November 2004 from the Assistant Legal Adviser to the Administration)

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

(Post-meeting note: The powerpoint presentation material provided by the Administration was issued to members vide LC Paper No. CB(1)192/04-05(01) on 9 November 2004.)

Follow-up actions to be taken by the Administration

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

- (a) Noting that the Administration had made reference to relevant provisions in other jurisdictions in formulating the proposals in the Bill, members invited the Administration to provide a paper covering the following information:
- (i) Comparison of the proposals in the Bill and the relevant provisions in other jurisdictions, including but not limited to the following aspects-
- Application of the provisions to parent undertakings which were incorporated or registered or formed locally and those which were not;
 - Application of the provisions to subsidiary undertakings which were incorporated or registered or formed locally and those which were not; and
 - Guidelines for company directors to exercise their discretion to apply the “true and fair view override” provisions, and the relevant authority responsible for ensuring compliance.
- (ii) Experience of and problems encountered by other jurisdictions in

implementing the relevant provisions.

- (b) To facilitate members' understanding of the scope of application of the Bill to different types of companies and their subsidiaries, the Administration was requested to provide a paper on the subject, including the following information:
- (i) Application of the Bill to parent undertakings which were -
 - incorporated or registered or formed in Hong Kong;
 - incorporated or registered or formed in the Mainland or other jurisdictions; or
 - listed in Hong Kong.
 - (ii) Application of the Bill to subsidiary undertakings which were incorporated or registered or formed in Hong Kong; and
 - (iii) Application of the Bill to subsidiary undertakings which were not incorporated or registered or formed in Hong Kong, in particular those incorporated or registered or formed in the Mainland.
- (c) To facilitate members' understanding of the proposed "dominant influence" test in determining "parent-subsidiary" relationship, the Administration was requested to provide a paper on the subject, including the following information:
- (i) Operation of the "dominant influence" test in a situation where more than one parent undertaking exercised dominant influence over a subsidiary undertaking, i.e. "joint control" of a subsidiary;
 - (ii) How group accounts in relation to a subsidiary undertaking under "joint control" were prepared;
 - (iii) Operation of the "dominant influence" test in a situation where a parent undertaking had a dominant influence in respect of the operating policies of a subsidiary undertaking while another parent undertaking had a dominant influence in respect of the financial policies of the same subsidiary undertaking; and
 - (iv) Meaning of "dominant influence". Whether there were any practice directions or court decisions on the application of the "dominant influence test" in determining "parent-subsidiary" relationship.
- (d) To address members' concern about the impact of the Bill on the financial reporting requirements on companies, the Administration was requested to provide a paper on the subject, including the following information:
- (i) Comparison of the existing and proposed requirements, with concrete examples to show the impact of the change;

- (ii) Cost implication of the proposed requirements on companies, in particular small companies; and
 - (iii) Impact of the proposed requirements on companies which were exempted from consolidation under the existing Companies Ordinance (CO) but would be required to file group accounts after the passage of the Bill.
- (e) In order to ascertain the need for and the impact of the proposed “true and fair view override” provisions, the Administration was requested to provide a paper on the subject, including the following information:
- (i) Whether the Financial Secretary (FS) had invoked the powers under sections 123(4) and 126(3) of CO to modify the requirements of CO as to the matters to be stated in a company’s accounts or group accounts;
 - (ii) Existing criteria for FS to exercise the powers under sections 123(4) and 126(3) of CO;
 - (iii) Impact of the proposed “true and fair view override” provisions on the responsibilities and liabilities of company directors and auditors in preparing company’s accounts or group accounts; and
 - (iv) Whether guidelines would be issued by the Administration or the Hong Kong Institute of Certified Public Accountants for company directors to apply the “true and fair view override” provisions so as to ensure that they would exercise their discretion in a reasonable manner.

Consultation with the public and relevant organizations

4. The Bills Committee agreed to invite the public to give views on the Bill by issuing a press release, announcing an invitation for views on the LegCo website, and writing to the 18 District Councils. The Bills Committee also agreed to invite submissions from the organizations/individuals which/who had been consulted by the Administration or had submitted views to the Administration on the relevant proposals, or had submitted views to the Bills Committee on Companies (Amendment) Bill 2003. The deadline for submissions would be 30 November 2004.

(Post-meeting note: The list of organizations/individuals to be invited to give views on the Bill was circulated to members for information vide LC Paper No. CB(1)201/04-05 on 10 November 2004.)

Meeting with deputations

5. The Bills Committee further agreed to meet with deputations and the Administration on Thursday, 16 December 2004, from 8:30 am to 10:30 am.

III. Any other business

6. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 1
Legislative Council Secretariat
24 November 2004

**Proceedings of the first meeting of the
Bills Committee on Companies (Amendment) Bill 2004
on Monday, 8 November 2004, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000105	Mr Albert HO Mr CHAN Kam-lam Miss TAM Heung-man Ms Audrey EU	Election of Chairman	
000106-000249	Chairman	Welcoming and introductory remarks	
000250-001729	Administration	Briefing on the proposals in the Bill with the aid of powerpoint presentation	
001730-001923	Chairman Hong Kong Institute of Certified Public Accountants (HKICPA)	HKICPA's support for the Bill to make the definition of the term "subsidiary" more closely in alignment with the International Accounting Standards (IASs) and to enhance quality and transparency of financial reporting of companies	
001924-003346	Mr CHAN Kam-lam Administration Chairman	(a) Major concerns expressed by organizations to the Bills Committee on Companies (Amendment) Bill 2003 (LC Paper No. CB(1)162/04-05(01)) (b) Member's concern about possible impact of the Bill on the development of the	

Time marker	Speaker	Subject(s)	Action Required
		<p>asset securitization market in Hong Kong (paragraph 3 of LegCo Brief (Ref: C2/1/57/2(04)Pt. 5))</p> <p>(c) Administration's awareness of concerns expressed by organizations about the consolidation of special purpose entities (SPEs)</p> <p>(d) Administration's view that companies should not have difficulties in complying with the new requirements</p> <p>(e) Experience of and problems encountered by other jurisdictions in implementing similar provisions as proposed in the Bill</p> <p>(f) Administration's advice that the IASs for preparation of group accounts did not provide exemption for SPEs and that the new IASs would be put into practice internationally in early 2005</p>	<p>Administration to provide the required information under paragraph 3(a)(ii) of the minutes</p>
003347-003711	Mr LUI Ming-wah Administration HKICPA	(a) Member's concern about cost implication of the new financial reporting requirements on companies, in particular possible cost burden on small companies	Administration to provide the required information under paragraph 3(d)(ii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(b) Administration's view that the new requirements should not have significant impact on the operating cost of companies	
003712-003944	Mr LUI Ming-wah Administration Chairman	Comparison on the proposals in the Bill and relevant provisions in other jurisdictions	Administration to provide the required information under paragraph 3(a)(i) of the minutes
003945-004056	Miss TAM Heung-man Administration HKICPA	(a) Member's concern about impact of the Bill on the operation of Inland Revenue Ordinance (IRO) and Estate Duty Ordinance (EDO) (b) Administration's confirmation that the proposals in the Bill would not affect the operation of IRO and EDO	
004057-004450	Miss TAM Heung-man HKICPA Administration Chairman	(a) Whether HKICPA would issue guidelines on the application of the proposed "true and fair view override" provisions (paragraph 9(f) of LC Paper No. CB(1)162/04-05(01)) (b) HKICPA's response that while it had no plan to issue such guidelines at the moment, the need would be reviewed in the light of implementation of the	

Time marker	Speaker	Subject(s)	Action Required
		provisions	
004451-012015	<p>Mr CHIM Pui-chung Administration HKICPA Chairman Assistant Legal Adviser 7 (ALA7) Mr Albert HO</p>	<p>(a) Application of the Bill to parent undertakings which were incorporated or registered or formed in Hong Kong, in the Mainland, or in other jurisdictions</p> <p>(b) Application of the Bill on subsidiary undertakings which were incorporated or registered or formed in Hong Kong, in the Mainland, or in other jurisdictions</p> <p>(c) Application of the Bill on companies listed in Hong Kong</p> <p>(d) Application of relevant provisions in other jurisdictions on parent and subsidiary undertakings</p> <p>(e) Operation of the “dominant influence” test in determining “parent-subsidiary” relationship in other jurisdictions, and whether there were any practice directions or court decisions on the application of the test</p>	<p>Administration to provide the required information under paragraph 3(b) of the minutes</p> <p>Administration to provide the required information under paragraph 3(b) of the minutes</p> <p>Administration to provide the required information under paragraph 3(b) of the minutes</p> <p>Administration to provide the required information under paragraph 3(a)(i) of the minutes</p> <p>Administration to provide the required information under paragraph 3(a)(ii) and 3(c)(iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
012016-012256	Mr CHAN Kam-lam Administration HKICPA Chairman ALA7	<p>(a) The need to introduce the proposed “true and fair view override” provisions</p> <p>(b) Member’s concern about the impact of the proposed “true and fair” view override” provisions on the responsibilities and liabilities of company directors and auditors in preparing company’s accounts or group accounts</p> <p>(c) Member’s concern about the discretion for company directors to apply the proposed “true and fair view override” provisions</p> <p>(d) Administration’s advice that the “true and fair view override” provisions would be used under very exceptional circumstances, and the reasons involved and the effects should be given in the accounts or statement</p> <p>(e) Monitoring on the application of the “true and fair view override” provisions to ensure company directors would exercise their discretion in a reasonable manner</p> <p>(f) Experience of other jurisdictions in implementing the “true and</p>	<p>Administration to provide the required information under paragraph 3(e)(iii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(e)(iv) of the minutes</p> <p>Administration to provide the required information under</p>

Time marker	Speaker	Subject(s)	Action Required
		fair view override” provisions	paragraph 3(a)(i) and (ii) of the minutes
012257-012744	Miss TAM Heung-man Chairman HKICPA Mr Albert HO	<p>(a) Operation of the “dominant influence” test in a situation where a subsidiary was under “joint control” by more than one parent undertaking</p> <p>(b) How groups accounts in relation to subsidiary undertaking under “joint control” were prepared</p> <p>(c) Operation of the “dominant influence” test in a situation where a parent undertaking had a dominant influence in respect of the operating policies of a subsidiary undertaking while another parent undertaking had a dominant influence in respect of the financial policies of the same subsidiary undertaking</p>	<p>Administration to provide the required information under paragraph 3(c)(i) of the minutes</p> <p>Administration to provide the required information under paragraph 3(c)(ii) of the minutes</p> <p>Administration to provide the required information under paragraph 3(c)(iii) of the minutes</p>
012745-012848	Mr Albert HO	(a) The Financial Secretary (FS)’s powers under sections 123(4) and 126(3) of the Companies Ordinance (CO) to modify the requirements of CO as to the matters to be stated in a company’s accounts or group accounts	Administration to provide the required information under paragraph 3(e)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		(b) Existing criteria for FS to exercise the powers under sections 123(4) and 126(3) of CO	Administration to provide the required information under paragraph 3(e)(ii) of the minutes
012849-013115	Chairman Administration	(a) Whether there would be new disclosure requirements on companies if the Bill was enacted (b) Whether the Bill would cause companies which were exempted from consolidation under the existing CO to file group accounts after the passage of the Bill	Administration to provide the required information under paragraph 3(d)(i) of the minutes Administration to provide the required information under paragraph 3(d)(iii) of the minutes
013116-013420	Chairman Administration HKICPA	Commencement of the Bill and the transitional provisions under clause 19	
013421-013750	Chairman Miss TAM Heung-man HKICPA	(a) Proposed arrangements for consulting the public and relevant organizations on the Bill (LC Paper No. CB(1)163/04-05) (b) Deadline for submissions and date for meeting with deputations and the Administration	