

立法會
Legislative Council

LC Paper No. CB(1)2538/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/10/2

Bills Committee on Companies Bill

**Minutes of the fourteenth meeting held on
Tuesday, 26 July 2011, at 9:00 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Starry LEE Wai-king, JP (Deputy Chairman)
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Ronny TONG Ka-wah, SC

Public officers attending : **Agenda item I**
Mr John LEUNG, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Mr Nick AU YEUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)

Ms Rita HO
Registry Solicitor
Companies Registry

Mrs Karen HO
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Ms Phyllis MCKENNA
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Ms Kitty TSUI
Senior Solicitor (Company Law Reform)
Companies Registry

Ms Marianna YU
Deputy Registry Manager (Registration)
Companies Registry

Mr Edward TYLER
Senior Assistant Law Officer (Civil Law)
Department of Justice

Ms Natalie WONG
Senior Government Counsel
Department of Justice

Miss Selina LAU
Senior Government Counsel
Department of Justice

Mr Ken FUNG
Government Counsel
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sharon CHUNG
Senior Council Secretary (1)4

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I Meeting with the Administration

Matters arising from the meetings on 28 June and 8 July 2011

(LC Paper No. CB(1)2756/10-11(01) -- Administration's response to issues raised by members at the meeting on 28 June 2011 relating to regulation of listed companies incorporated outside Hong Kong

LC Paper No. CB(1)2756/10-11(02) -- Administration's response to issues raised by members at the meeting on 8 July 2011 relating to Part 5)

Clause-by-clause examination of the Bill

(LC Paper No. CB(1)2756/10-11(03) -- Comparison Table for Part 2 -- Registrar of Companies and Companies Register

LC Paper No. CB(3)412/10-11 -- The Bill (Part 2))

Other relevant papers

(File Ref: CBT/17/2C -- Legislative Council Brief
LC Paper No. LS26/10-11 -- Legal Service Division Report

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LC Paper No. CB(1)1406/10-11(01) -- Paper on Companies Bill prepared by the Legislative Council Secretariat (Background brief)

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

Admin 2. The Bills Committee requested the Administration to provide written responses to the following concerns/requests --

Companies incorporated outside Hong Kong

- (a) the situations of company incorporation in comparable jurisdictions including the United Kingdom, the United States, Singapore and Australia, and their respective advantages in attracting company incorporation; how these situations and advantages compare with those in Hong Kong;
- (b) measures the Administration will take to promote company incorporation in Hong Kong;
- (c) comparison on the regulation under the Companies Bill ("CB") over Hong Kong incorporated companies and non-Hong Kong incorporated companies, listed and non-listed, in particular, in respect of directors' performance of duties, in order to shed light on whether these companies are regulated even-handedly;

Clause 21 -- Registrar's functions

- (d) a list of functions that the Registrar of Companies ("the Registrar") will perform under CB or any other Ordinances;

Clause 23 -- Registrar may issue guidelines

- (e) the purpose of clause 23(5);
- (f) the meaning of clause 23(5)(b);
- (g) whether there would be possible conflict between contravention of the guidelines issued by the Registrar under clause 23(1) resulting in no liability and allowing the guidelines to be

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admissible as evidence in legal proceedings;

- (h) the consequences of contravention of the guidelines issued under clause 23(1);
- (i) the operation of the relevant provisions in the Financial Reporting Council Ordinance (Cap. 588) and the United Kingdom Companies Act 2006 in addressing the concerns in (g) and (h) above as clause 23 had been drafted with reference to the two pieces of legislation;

Clause 25 -- Fees payable to Registrar

- (j) members' suggestion that transitional provisions in CB for fees payable to the Registrar should be formulated and Schedule 8 to the existing Companies Ordinance (in which fees payable to the Registrar are set out) be repealed;

Clause 26(9) -- Specified address

- (k) members' suggestion that the existing residential addresses of directors and company secretaries in the Companies Register be automatically replaced by the companies' registered addresses after CB comes into effect, or other measures be considered for streamlining the relevant procedures; and

Clause 30 -- Registrar may specify requirements (for section 29(1)) and Clause 31 -- Registrar may agree to delivery by electronic means (for section 29(1))

- (l) the proposed arrangements for delivery and authentication of documents by electronic means after commencement of CB and the progress of implementation of e-Registry service of the Companies Registry.

II Any other business

3. The Chairman reminded members that the next meeting of the Bills Committee would be held on Wednesday, 31 August 2011 at 2:30 pm to meet with the Administration.

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4. There being no other business, the meeting ended at 12:06 pm.

Council Business Division 1
Legislative Council Secretariat
5 September 2012

Bills Committee on Companies Bill

**Proceedings of the fourteenth meeting
on Tuesday, 26 July 2011, at 9:00 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001-000556	Chairman	Opening remarks	
<u>Discussion on the Administration's response to issues raised by members on 28 June 2011 relating to regulation of listed companies incorporated outside Hong Kong</u>			
000557-001457	Administration	Briefing on response to issues raised by members on 28 June 2011 (LC Paper No. CB(1)2756/10-11(01))	
001458-002456	Mr Andrew LEUNG Administration	<p>Mr Andrew LEUNG's views that the Administration should --</p> <p>(a) study the reasons why a large number of companies operating or listed in Hong Kong chose to incorporate outside Hong Kong after 1997, and whether this might reflect a decline in Hong Kong's competitiveness as a corporate domicile vis-à-vis other jurisdictions;</p> <p>(b) promote company incorporation in Hong Kong through the rewrite of the Companies Ordinance ("CO"); and</p> <p>(c) provide information about the situations of company incorporation in comparable jurisdictions including the United Kingdom, the United States, Singapore and Australia, and their respective advantages in attracting company incorporation; and how these situations and advantages compared with those in Hong Kong</p> <p>The Administration's response that --</p> <p>(a) Hong Kong's competitiveness as a place for business had been confirmed by</p>	<p>The Administration to take action as in paragraph 2(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>favourable rankings by a number of international financial institutions;</p> <p>(b) the number of incorporations in Hong Kong had been on a rising trend in the past five years;</p> <p>(c) in choosing a place for incorporation, a company would consider a number of factors including the tax system, incorporation and disclosure requirements, and transparency standards of the respective place; for instance, some companies might choose to incorporate elsewhere in order to save stamp duty for major shareholders, and some jurisdictions that had relatively lower corporate governance standards might attract more company incorporation;</p> <p>(d) the rewrite of CO would help enhance corporate governance standards without unduly discouraging Hong Kong incorporations;</p> <p>(e) as regards regulation of listed companies, companies listed in Hong Kong, regardless of their place of incorporation, were required to comply with requirements under the Securities and Futures Ordinance ("SFO") and Listing Rules of the Hong Kong Exchanges and Clearing Limited</p>	
002457-003419	Mr Albert HO Administration	<p>Mr Albert HO's concern about difficulty in enforcing the laws of Hong Kong against directors of companies listed in Hong Kong who resided and made business decisions outside Hong Kong.</p> <p>The Administration's response that --</p> <p>(a) the provision on director's duty of care, skill and diligence under the Companies Bill ("CB") would apply to companies incorporated in Hong Kong, while the directors' duties of companies</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>incorporated outside Hong Kong were governed by the laws of their respective places of incorporation or applicable case law; and</p> <p>(b) companies listed in Hong Kong, irrespective of their place of incorporation, were subject to the statutory requirements set out in the SFO and non-statutory requirements in the Listing Rules</p>	
003420-004459	Chairman	<p>The Chairman's request for the Administration to provide information on --</p> <p>(a) measures to promote company incorporation in Hong Kong; and</p> <p>(b) comparison of the regulation under CB for Hong Kong incorporated companies and non-Hong Kong incorporated companies, listed and non-listed and, in particular, in respect of directors' duties</p>	The Administration to take action as in paragraphs 2(b) and 2(c) of the minutes
004500-005216	Mr Andrew LEUNG Ir Dr Raymond HO SALA 3 Administration Chairman	<p>Mr Andrew LEUNG's remark that in the light of developments in the business operation environment and taxation systems of other jurisdictions in recent years, the Administration should study afresh the issues relating to incorporation of companies in Hong Kong</p> <p>Ir Dr Raymond HO noted from his experience in the work of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products that the power of a regulatory authority could be constrained by other ordinances. He considered that the Bills Committee should consider studying the issue of constraints on the power of regulators of companies.</p> <p>The Administration's remarks that it would provide the information requested by the Chairman and would strive to cover issues related to enforcement actions in the paper</p> <p>The Chairman's suggestion that the Administration should consult market</p>	

Time marker	Speaker	Subject(s)	Action required
		practitioners when preparing the paper.	
<u>Discussion on the Administration's response to issues raised by members on 8 July 2011 in relation to Part 5</u>			
005217-005438	Administration	<p>Briefing on response to issues raised by members on 8 July 2011 (LC Paper No. CB(1)2756/10-11(02))</p> <p>Members raised no questions on the paper.</p>	
<u>Clause-by-clause examination of the Bill</u> Part 2 of the Bill (LC Paper No. CB(1)2756/10-11(03))			
005439-010501	Chairman Administration Mr Andrew LEUNG SALA3 Prof Patrick LAU	<p>The Chairman's remarks that the Bills Committee would focus on examining the English text of the clauses and the Legal Advisers to the Bills Committee would scrutinize the Chinese text, and if necessary, would raise issues for members' discussion</p> <p>The Administration's briefing on "Comparison Table for Part 2 -- Registrar of Companies and Companies Register" (LC Paper No. CB(1)2756/10-11(03))</p> <p>Discussion on improvement to the contents of the Comparison Table</p>	
010502-011638	Administration Mr Andrew LEUNG Prof Patrick LAU Chairman SALA3	<p><u>Clause 19 -- Interpretation</u> <i>Interpretation of "company"</i></p> <p>Enquiry about the difference, if any, on the definition of "company" in Part 1 and Part 2 of CB</p> <p>The Administration explained that Part 1 listed out general interpretation of the terms used in the entire CB. The definitions of certain terms would be set out in the interpretation sections of specific parts of CB if necessary in order to facilitate drafting of provisions in those particular parts. These definitions were only applicable to specific parts of CB but not to the entire CB.</p> <p>SALA3's remark that a similar approach was adopted in the drafting of other legislation in Hong Kong.</p>	

Time marker	Speaker	Subject(s)	Action required
011639-012414	Administration Mr Andrew LEUNG SALA3 Prof Patrick LAU	<p><u>Clause 20 -- Office of Registrar</u></p> <p>Members' enquiry about the use of the seal of the Registrar of Companies ("the Registrar") mentioned in clause 20(4)</p> <p>The Administration's reply that the seal was used for the authentication of documents required for the performance of the Registrar's functions</p> <p>SALA3's remarks that clause 20(4) was a restatement of section 303(4) of CO</p> <p><u>Clause 21 -- Registrar's functions</u></p> <p>Mr Andrew LEUNG's view that clause 21 did not give substantial information on the functions of the Registrar</p> <p>The Administration was requested to provide a list of functions that the Registrar would perform under CB</p>	The Administration to take action as in paragraph 2(d) of the minutes
012415-012622	Administration Mr Albert HO	<p><u>Clause 22 -- Registrar may specify form</u></p> <p>In response to Mr Albert HO's enquiry, the Administration advised that a document submitted by a company not in a correct form specified by the Registrar could be considered an unsatisfactory document under clause 29 and the Registrar might refuse to register the document.</p>	
012623-020252	Mr Andrew LEUNG Prof Patrick LAU Mr Albert HO Mr WONG Ting-kwong Chairman Administration SALA 3	<p><u>Clause 23 -- Registrar may issue guidelines</u></p> <p>Mr Andrew LEUNG, Prof Patrick LAU and Mr WONG Ting-kwong expressed concerns as follows --</p> <p>(a) the purpose of clause 23(5), which provided that contravention of the guidelines issued by the Registrar would not attract civil or criminal liability but the guidelines were admissible in evidence in legal proceedings;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the meaning of clause 23(5)(b), which stipulated that "proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter";</p> <p>(c) possible conflict between contravention of the guidelines resulting in no liability and allowing the guidelines to be admissible as evidence in legal proceedings; and</p> <p>(d) the consequences of contravention of the guidelines.</p> <p>Mr Albert HO's remarks that --</p> <p>(a) there were a number of ordinances which empowered the enforcement agency to formulate guidelines for compliance by concerned parties, and some guidelines were made in consultation with the concerned industry; and</p> <p>(b) under some ordinances, compliance with the guidelines would be a defence for persons in legal proceedings</p> <p>Suggestion by Mr Andrew LEUNG and Mr WONG Ting-kwong that clause 23 should provide that compliance with the guidelines issued by the Registrar would be a defence for persons in legal proceedings</p> <p>The Administration's response that --</p> <p>(a) the purpose for the Registrar to issue guidelines was to help the public/stakeholders understand the operation of provisions in CB and compliance with the provisions;</p> <p>(b) there were existing guidelines issued by the Registrar on directors' duties, company names and requirements for documents; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the Administration would consider members' suggestion about providing in CB that compliance with guidelines issued by the Registrar should constitute a defence.</p> <p>SALA3's remarks that --</p> <p>(a) as provided in clause 23(1), the guidelines issued by the Registrar serve to indicate the manner in which the Registrar proposed to perform her function or exercise her power; or to provide guidance on the operation of any provision of CB;</p> <p>(b) the court could make reference to the Registrar's guidelines in determining the matters in relevant legal proceedings; and</p> <p>(c) compliance with the guidelines by a company or an officer could be adduced as evidence to negate <i>mens rea</i> where criminal liability was in issue</p>	
<i>Break (020253- 021232)</i>			
021233-021434	Chairman Mr Andrew LEUNG	<p><u>Clause 23 -- Registrar may issue guidelines</u></p> <p>Request for the Administration to provide written responses to address members' concerns and suggestions on clause 23</p>	The Administration to take action as in paragraph 2((e) to (i)) of the minutes
021435-021446	Administration	<p><u>Clause 24 -- Registrar may authenticate document etc.</u></p> <p>Members raised no queries.</p>	
021447-022128	Administration Mr Andrew LEUNG Chairman SALA3	<p><u>Clause 25 -- Fees payable to Registrar</u></p> <p>Discussion on transitional provisions for the clause</p> <p>Mr Andrew LEUNG's suggestion that the Administration should consider formulating transitional provisions in CB for fees payable to the Registrar and repealing Schedule 8 to the</p>	The Administration to take action as in paragraph 2(j) of

Time marker	Speaker	Subject(s)	Action required
		CO	the minutes
022129-024002	Administration Mr Andrew LEUNG SALA 3 Mr Albert HO Chairman	<p><u>Clause 26 -- Registrar must keep records of companies</u></p> <p>Mr Andrew LEUNG's enquiry on the consequence if the Registrar failed to keep a record of a company</p> <p>SALA3's advice that the public could apply to the court for an order directing the Registrar to perform her statutory duties under CB, and the Registrar enjoyed immunity from legal liability if her actions or omissions in the performance of her duties under CB were made in good faith</p> <p><u>Specified address under clause 26(9)</u></p> <p>Discussion on the transitional arrangements, upon commencement of CB, for automatically recording a director's residential address as the "correspondence address" in the Companies Register</p> <p>The Administration's advice that, to withhold the residential address from public disclosure, directors and company secretaries were required to make applications and pay the necessary fee to change the information</p> <p>Mr Andrew LEUNG's view that the above requirement was not user-friendly and cumbersome</p> <p>Mr Albert HO's view that only the registered address of a company should be made public</p> <p>The Administration was requested to consider members' suggestion to record the companies' registered/office addresses (instead of the existing residential addresses of directors and company secretaries) as the correspondence addresses of directors and company secretaries upon commencement of CB, or other measures to streamline the procedures</p>	The Administration to take action as in paragraph 2(k) of the minutes
024003-	Administration	<u>Clause 27 -- Registrar not required to keep</u>	

Time marker	Speaker	Subject(s)	Action required
024159		<p><u>certain documents</u> <u>Clause 28 -- Registrar must keep Index of Company Names</u></p> <p>Members raised no queries.</p>	
024200-025322	Administration Chairman SALA3	<p><u>Clause 29 -- Unsatisfactory document</u></p> <p>Chairman and SALA3 seeking clarifications and examples on clause 29</p>	
025323-025743	Administration Mr Andrew LEUNG	<p><u>Clause 30 -- Registrar may specify requirements (for section 29(1))</u></p> <p>Mr Andrew LEUNG's request for the Administration to provide information on the proposed arrangements for delivery and authentication of documents by electronic means after commencement of CB, and the progress of implementation of e-Registry service of the Companies Registry</p>	The Administration to take action as in paragraph 2(1) of the minutes
025744-030459	Administration Mr Andrew LEUNG SALA3	<p><u>Clause 31 -- Registrar may agree to delivery by electronic means (for section 29(1))</u> <u>Clause 32 -- Financial Secretary may make regulations requiring delivery by electronic means (for section 29(1))</u></p> <p>Mr Andrew LEUNG's suggestion that the Administration should lower the e-filing fees in order to promote delivery of documents through electronic means</p> <p>SALA3's enquiry about whether the deadlines for filing documents through electronic means and in paper form were the same</p> <p>The Administration's response that while the dates were the same, e-filing could be made after office hours</p>	
030500-030605	Chairman	Date of next meeting	