

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1710/12-13  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/5/12/1

**Subcommittee on Subsidiary Legislation Made under  
the New Companies Ordinance**

**Minutes of the first meeting on  
Thursday, 21 February 2013, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon Kenneth LEUNG (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Starry LEE Wai-king, JP  
Hon Paul TSE Wai-chun, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon Steven HO Chun-yin  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
Hon Dennis KWOK  
Hon SIN Chung-kai, SBS, JP  
Hon Martin LIAO Cheung-kong, JP  
Dr Hon CHIANG Lai-wan, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon CHUNG Kwok-pan

**Public officers  
Attending** : Financial Services and the Treasury Bureau

Mr Arsene YIU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 6

Companies Registry

Mrs Karen HO  
Deputy Principal Solicitor (Company Law Reform)

Ms Phyllis MCKENNA  
Deputy Principal Solicitor (Company Law Reform)

Mrs Christine Frances SIT  
Senior Solicitor (Company Law Reform)

Ms Margaret CHAN  
Solicitor (Company Law Reform)

Department of Justice

Mr Sunny CHAN  
Senior Assistant Law Draftsman

Ms Phyllis POON  
Senior Government Counsel

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

**Staff in attendance** : Miss Winnie LO  
Assistant Legal Adviser 7

Ms Angel SHEK  
Senior Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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## **I Election of Chairman**

### Election of Chairman

Mr Jeffrey LAM, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr WONG Ting-kwong was nominated by Mr Andrew LEUNG and the nomination was seconded by Ms Starry LEE. Mr WONG Ting-kwong accepted the nomination.

3. Mr Kenneth LEUNG was nominated by Mr SIN Chung-kai and the nomination was seconded by Mr Dennis KWOK. Mr Kenneth LEUNG accepted the nomination.

4. As there was no other nomination, Mr Jeffrey LAM announced a vote by secret ballot. After all members had cast their votes, Mr Jeffrey LAM invited Mr Andrew LEUNG and Mr SIN Chung-kai who had nominated the two candidates to monitor the counting of votes.

5. Mr Jeffrey LAM announced that 9 and 5 members voted for Mr WONG Ting-kwong and Mr Kenneth LEUNG respectively. Mr LAM declared Mr WONG Ting-kwong was elected the Chairman of the Subcommittee. Mr WONG then took the chair.

### Election of Deputy Chairman

6. The Chairman invited nominations for the deputy chairmanship. Mr Kenneth LEUNG was nominated by Mr SIN Chung-kai and the nomination was seconded by Dr CHIANG Lai-wan. Mr Kenneth LEUNG accepted the nomination. There being no other nomination, the Chairman declared that Mr Kenneth LEUNG was elected the Deputy Chairman of the Subcommittee.

## **II Meeting with the Administration**

(L.N. 7 of 2013

-- Companies (Words and Expressions in Company Names) Order

L.N. 8 of 2013	-- Companies (Disclosure of Company Name and Liability Status) Regulation
L.N. 9 of 2013	-- Companies (Accounting Standards (Prescribed Body)) Regulation
L.N. 10 of 2013	-- Companies (Directors' Report) Regulation
L.N. 11 of 2013	-- Companies (Summary Financial Reports) Regulation
File Ref: CBT/7/6C	-- Legislative Council Brief
LC Paper No. LS23/12-13	-- Legal Service Division Report
LC Paper No. CB(1)579/12-13(01)	-- Background brief on the Subsidiary Legislation Made under the New Companies Ordinance prepared by the Legislative Council Secretariat)

Discussion

7. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up action to be taken by the Administration

8. The Administration was requested to take follow-up actions in addressing the views or concerns expressed by members, as follows:

Companies (Disclosure of Company Name and Liability Status) Regulation

- (a) To provide information on the legislation/regulation of overseas jurisdictions (e.g. the United Kingdom and Australia) with regard to the requirements on disclosure of company name and liability status.
- (b) To clarify the requirements in respect of display/disclosure of the registered name of a company, including:

- (i) communication/transaction documents in hard copy form or provided through electronic means, e.g. via e-mails;
  - (ii) the definition of "communication document", in particular whether correspondences pertaining to a transaction of a company would be regarded as "business letter" ("業務信件") of the company; and
  - (iii) meaning of "open to the public" in the definition of business venue, in particular, whether a venue not intended by the company to be open to the public but might be visited by the public (e.g. reporters) not by invitation/appointment would be regarded as a business venue.
- (c) To provide information on the compliance situation regarding the requirements on disclosure/display of company names under the existing Companies Ordinance, including number of complaint on non-compliant cases, enforcement actions and prosecutions taken by the Administration, and penalties imposed on convicted cases.
- (d) To review the reference of "manager of the property of a company" in section 3(5) of the Regulation to avoid possible confusion with "manager of a company".
- (e) To review the use of "Coy." as a permitted abbreviation in the requirement on display/disclosure of a company's registered name in section 6(a)(i) of the Regulation.

#### Companies (Directors' Report) Regulation

- (f) To provide information on –
- (i) the background and rationale for removing the current requirement for disclosure of issue of debentures or arrangement for enabling directors to acquire benefits by means of the acquisition of debentures ("the debentures arrangement") in the director's report, including similar requirements of overseas jurisdictions;
  - (ii) major differences in the disclosure requirements in relation to the debentures arrangement for listed and non-listed companies; and

- (iii) whether other documents of the company, e.g. company accounts, financial statements, would provide information on the debentures arrangement.

*(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)610/12-13(02) on 26 February 2013.)*

### **III Any other business**

#### Invitation of public views

9. Members agreed that it was unnecessary for the Subcommittee to invite the public or relevant parties to give views on the five pieces of subsidiary legislation.

#### Legislative timetable

10. The Chairman informed members that the scrutiny period for the five pieces of subsidiary legislation had been extended by resolution of the Council to 27 March 2013. Members were invited to note that the dates of reporting to House Committee on the work of the Subcommittee and giving notice of amendment to the subsidiary legislation were 15 March and 20 March 2013 respectively.

#### Date of next meeting

11. Members agreed to hold the next meeting on Wednesday, 27 February 2013, at 8:30 am.

12. There being no other business, the meeting ended at 10:06 am.

Council Business Division 1  
Legislative Council Secretariat  
20 August 2013

**Proceedings of the Subcommittee on Subsidiary Legislation Made under  
the New Companies Ordinance**

**First meeting on Thursday, 21 February 2013, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000212 – 000920	Mr Jeffery LAM Mr Andrew LEUNG Ms Starry LEE Mr WONG Ting-kwong Mr SIN Chung-kai Mr Dennis KWOK Mr Kenneth LEUNG	Election of Chairman	
000921 – 001136	Chairman Mr SIN Chung-kai Dr CHIANG Lai-wan Mr Kenneth LEUNG	Election of Deputy Chairman	
001137 – 001325	Chairman	Introductory remark	
001326 – 002427	Administration	Briefing by the Administration on the five pieces of subsidiary legislation (L.N.7 to L.N. 11 of 2013) made under the new Companies Ordinance ("New CO")  (The Legislative Council Brief File Ref: CBT/7/6C)	
002428 – 003021	Mr James TIEN Administration	Mr TIEN's enquiries on Companies (Disclosure of Company Name and Liability Status) Regulation (L.N. 8) –  (a) whether both the English and Chinese names of a company had to be displayed at the registered office/business venue of the company;  (b) whether the registered name of a company situated in a multi-storey building should be displayed at various locations of the building, i.e. the main lobby of the building, the floor lobby in which the company was located, and outside the office premises of the company;  (c) the size specification, if any, of the display; and	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) the display requirement on shelf companies (i.e. companies that had no transaction).</p> <p>The Administration's replies that –</p> <p>(a) if a company had registered both an English and a Chinese name, both names needed to be displayed. If a limited company registered by a name in English only also displayed or stated any name of or for the company in Chinese characters (transliteration or translation of its registered name), the company must append to the Chinese translation so displayed the Chinese characters "有限公司" and vice versa for a limited company registered by a Chinese name only, i.e. any English translation of the name displayed must include the word "limited";</p> <p>(b) the requirements were that the registered name of a company had to be displayed in legible characters continuously at its registered office and each business venue, and the registered name had to be so positioned that it could be easily seen by any visitor to the registered office/business venue. There was no requirement for a company to display its registered name at the building lobby or floor lobby;</p> <p>(c) there was no specification on the size of characters that would be regarded as "legible" and it would be subject to reasonable interpretation of the actual circumstances whether the characters could be seen by naked eye;</p> <p>(d) for a secretarial company (situated in a multi-storey building) which provided services to a number of companies, the registered names of the companies under its service could be displayed at the premises of the secretarial company. The display of names for these companies (if there were more than six companies) could be made through an electronic device subject to meeting the requirements on frequency and duration of display; and</p>	



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		(e) shelf companies not having had any accounting transaction would be exempted from the display requirement.	
003022 – 004017	Dr CHIANG Lai-wan Administration	<p>In response to Dr CHIANG's enquiry on L.N. 8, the Administration clarified that a company must display continuously its registered name at both its registered office <u>and</u> every business venue that was open to the public. The new requirement was that the registered name displayed must be easily seen by any visitor to the office/venue while the requirement under the existing CO was for the company to paint or affix its name in a conspicuous position outside of its office or place in which its business was carried on.</p> <p>On Dr CHIANG's enquiry about the disclosure of registered company name in communication documents or transaction instruments provided through electronic means, including internal correspondences between staff of a company, the Administration advised that the disclosure requirement covered communication documents and transaction instruments in hard copy, electronic form or any other form, and applied to official correspondences made in the name or on behalf of a company. The requirements were the same under the existing CO.</p> <p>Dr CHIANG expressed concern about the validity of a company's communication document or transaction instrument if it did not state the registered company name or if it was not sent through the company's official/registered email address.</p> <p>The Administration explained that section 661 of the New CO provided for the civil consequences of failure to make required disclosures of company name. Under the provision, if an officer of a company or a person on its behalf signed or authorized to sign on behalf of the company, any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the company's name was not mentioned in the manner as required by regulations, that officer or person was personally liable to the holder of the bill etc (unless it was duly paid by the company).</p>	<p>The Administration to take action as required in paragraph 8(b)(i) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
004018 – 005146	Mr James TO Chairman Administration	<p>Mr TO sought clarification on L.N. 8 in respect of –</p> <ul style="list-style-type: none"> <li>(a) the definition of "communication document", in particular whether correspondences pertaining to a transaction of a company would be regarded as "business letter" ("業務信件"); and</li> <li>(b) the meaning of "open to the public" in the definition of business venue, in particular, whether a business venue used by the company for its internal meetings or its meetings with outsiders (guests/clients etc.) by appointment only would require display of the company's registered name.</li> </ul> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) the definitions of "communication document" and "transaction instrument" were set out in section 2 of L.N. 8, which followed the approach under the existing CO;</li> <li>(b) whether a particular document would fall under the definitions would depend on the circumstances of the case, and basically, official correspondences pertaining to the transaction of a company would be covered; and</li> <li>(c) under the existing CO, the requirement on display of company names applied to every office and place in which the company carried on its business (irrespective of whether it was open to the public). Taking into account the concern of the business sector that some business venues would not have any visitors and there appeared no need for the company name to be displayed, L.N. 8 had provided more flexibility to require only those business venues "open to the public" to display the registered company name. A venue frequently used to receive visitors by appointment might be regarded as "open to the public" but each case should be judged on its own merits.</li> </ul>	The Administration to take action as required in paragraphs 8(b)(ii) and 8(b)(iii) of the minutes.

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		<p>Mr TO enquired whether a company would be regarded as meeting the requirement on display of company name if the entrance to its registered office/business venue was a wooden door and the company's registered name was positioned inside the premises that was easily seen by any visitor after opening the wooden door.</p> <p>The Administration advised that every case should be considered in its unique circumstances, e.g. whether the "visitor" in question was a genuine visitor or just a passer-by, whether the door was constantly closed and hence the visitor could not see the company name easily.</p>	
005147 – 005721	Deputy Chairman Administration	<p>The Deputy Chairman enquired whether the list of words and expressions in the Schedule to the Companies (Words and Expressions in Company Names) Order (L.N. 7) was exhaustive.</p> <p>The Administration explained that the Schedule attached to L.N. 7 contained words or expressions which a company name must not be registered by except with the Registrar of Companies' approval. Moreover, under the New CO, there were other provisions on restriction of registration of company names e.g. the name could not be the same as one appeared in the Index of Company Names, or be offensive or against public interest. Furthermore, a company must not register certain names unless with prior approval by the Registrar of Companies e.g. the name must not purport to be a government organization.</p> <p>In reply to the Deputy Chairman's enquiries, the Administration clarified that –</p> <p>(a) in respect of Companies (Directors' Report) Regulation (L.N. 10), the meaning of "equity-linked agreement" was given in section 6(a) of the Regulation. The examples given in section 6(3)(b) and 6(3)(c) were illustrations of what could be included/not included as "equity-linked agreement". The list was not exhaustive; and</p> <p>(b) in respect of Companies (Summary Financial Reports) Regulation (L.N. 11), it applied to both listed and non-listed companies eligible</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>for preparing a financial report in summary form for sending to its members in place of the reporting documents from which the report was derived. The preparation of summary financial reports by a company was entirely voluntary.</p>	
005722 – 010305	Mr Dennis KWOK Administration	<p>In reply to Mr KWOK's enquiries on Companies (Disclosure of Company Name and Liability Status) Regulation (L.N. 8), the Administration advised that –</p> <ul style="list-style-type: none"> <li>(a) failure for a company to disclose/state its registered name in the communication document (under L.N. 8) would not give rise to the civil consequences as set out in section 661 of the new CO.. The civil consequence was on the officer of a company or a person on its behalf who failed to make required disclosures in the transaction instruments specifically set out in section 661 of the New CO;</li> <li>(b) the definition of "accounting transaction" under section 3(4) of L.N. 8 was provided in section 2 of the New CO;</li> <li>(c) "manager of the property of a company" under section 3(5) of L.N. 8 referred to a manager appointed for the purpose of carrying out liquidation and winding up of the company's estate or business, which was different from "manager of a company" who performed managerial functions in relation to the company; and</li> <li>(d) if the registered office/business venue of the company in liquidation was a place where the business of liquidator, receiver or manager was carried on, the place would not be required to display the registered company name. The exemption was meant to alleviate compliance burden for these parties.</li> </ul> <p>Mr KWOK suggested the Administration to consider reviewing –</p> <ul style="list-style-type: none"> <li>(a) the reference to "manager of the property of a company" to avoid possible confusion with "manager of a company"; and</li> </ul>	<p>The Administration to take action as required in paragraphs 8(d) and 8(e) of the minutes.</p>

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		<p>(b) the use of "Coy." as a permitted abbreviation in the requirement on display/disclosure of a registered company name in section 6(a)(i) of L.N. 8 as the abbreviation was rarely used in Hong Kong and might carry different meanings.</p> <p>The Administration advised that "Coy." was an abbreviation permitted under the existing CO. It agreed to consider Mr KWOK's suggestions.</p>	
010306 – 010835	Mr Andrew LEUNG Chairman	<p>In relation to L.N. 8, Mr LEUNG expressed concern that in view of the numerous correspondences a company exchanged with outside parties, it was important to clarify the requirements on display/disclosure of company name in communication/transaction documents, in particular regarding –</p> <p>(a) communication documents and transaction instruments in hard copy form or provided through electronic means;</p> <p>(b) business/transaction documents which contained a company name different from the name displayed at the registered office/business venue (e.g. the invoice of credit payment to a company was issued by a subsidiary of the company); and</p> <p>(c) business venue not intended by the company to be open to the public but might be visited by the public (e.g. reporters) not by invitation/appointment.</p> <p>Mr LEUNG considered that in working out requirements on display/disclosure of company name, the Administration should be mindful of the need to facilitate operation of companies and minimize compliance burden on companies. He requested the Administration to provide information on the legislation/regulation of overseas jurisdictions (e.g. the United Kingdom and Australia) with regard to the requirements on display/disclosure of company name and liability status.</p>	The Administration to take action as required in paragraphs 8 (a) and 8(b) of the minutes.
010836 – 011436	Mr Paul TSE Administration Chairman	Discussion on the compliance situation regarding the requirements on disclosure/display of company names under the existing CO.	The Administration to take action as required in

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr TSE expressed concern if the new requirement on display/disclosure of company name in L.N. 8 might tighten the requirements under the existing CO. The Administration advised that –</p> <ul style="list-style-type: none"> <li>(a) the arrangements under L.N. 8 would provide greater flexibility as it would remove the requirement for a company to display its registered name provided that the business venue was not open to the public; and instead of displaying the registered name outside the premises of the registered office/where business was carried on, the new requirement allowed the display of company name at a location easily seen by any visitor;</li> <li>(b) the Companies Registry would act on complaints in carrying out investigation and taking enforcement actions; and</li> <li>(c) the daily default fine for non-compliance with requirements on display/disclosure of company name was removed under L.N. 8, and the relevant liabilities for the company and the responsible officer were aligned for offences in respect of breaches on display/disclosure of company name requirements.</li> </ul> <p>Mr TSE urged the Administration to explain to the business sector the changes, if any, in the enforcement approach regarding requirements on display/disclosure of company name under the New CO.</p> <p>The Chairman emphasized the importance of the enforceability of statutory requirements.</p>	<p>paragraph 8(c) of the minutes.</p>
011437 – 011734	Chairman Mr Andrew LEUNG Mr Paul TSE	Discussion on invitation of views from the public and deputations.	
<b>Clause-by-clause examination of the subsidiary legislation</b>			
011735 – 011922	Administration	<p><b><u>Companies (Words and Expressions in Company Names) Order (L.N. 7 of 2013)</u></b></p> <p><u>Section 1 – Commencement</u></p> <p>Members raised no questions.</p>	

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011923 – 011959	Dr CHIANG Lai-wan	<p><u>Section 2 – Specification of words and expressions for purposes of section 100(2)(b) of Ordinance</u></p> <p>In reply to Dr CHIANG, the Administration clarified that the term "kaifong" was a transliteration of "街坊".</p>	
012000 – 012103	Administration	<p><b><u>Companies (Accounting Standards (Prescribed Body)) Regulation (L.N. 9 of 2013)</u></b></p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Prescribed body</u></p> <p>Members raised no questions.</p>	
012104 – 012144	Administration	<p><b><u>Companies (Directors' Report) Regulation (L.N. 10 of 2013)</u></b></p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Interpretation</u></p> <p>Members raised no questions.</p>	
012145 – 013541	Mr James TO Mr Andrew LEUNG Administration Chairman	<p><u>Section 3 – Directors' interests</u></p> <p>Mr TO's enquiry on the background and rationale for removing the current requirement for disclosure of issue of debentures or arrangement for enabling directors to acquire benefits by means of the acquisition of debentures ("the debentures arrangement") in the directors' report, including similar requirements of overseas jurisdictions. He considered it inappropriate to remove the requirement as the debentures arrangement might also constitute benefits to directors. Removing the requirement from the contents of the directors' report might deprive company members or shareholders from the provision of important information pertaining to benefits of directors.</p> <p>Mr TO and the Chairman asked whether other documents of the company, e.g. company accounts and financial statements, would provide information on the debentures arrangement.</p> <p>The Administration advised that the removal of the requirement in question had taken into account the recommendation of an advisory group under the</p>	

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		<p>Standing Committee on Company Law Reform and having regard that –</p> <p>(a) issue of debentures was a common form of financing for a company, which did not involve changes in the company's shareholding;</p> <p>(b) the liabilities of a company would be reflected in its annual report and financial statements; and</p> <p>(c) the New CO set out the requirements for disclosure of various types of benefits to directors, such as loans in favour of directors. The details would be prescribed under the Companies (Disclosure of Information about Benefits of Directors) Regulation to be made under the New CO.</p> <p>Mr LEUNG enquired about the major differences, if any, in relation to disclosure of debentures arrangement for listed and non-listed companies.</p> <p>The Administration was requested to provide information on members' enquiries above.</p>	<p>The Administration to take action as required in paragraph 8(f) of the minutes.</p>
013542 – 013736	Chairman	Legislative timetable and date of next meeting	