

立法會
Legislative Council

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

**Minutes of the third meeting on
Wednesday, 6 March 2013, at 10:45 am
in Conference Room 2A 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 Abraham SHEK Lai-him, SBS, 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 CHUNG Kwok-pan

Members absent : Hon Albert HO Chun-yan
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 Martin LIAO Cheung-kong, JP
Dr Hon CHIANG Lai-wan, JP

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

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

Companies Registry

Ms Phyllis MCKENNA
Deputy Principal Solicitor (Company Law Reform)

Mrs Christine Frances SIT
Senior Solicitor (Company Law Reform)

Department of Justice

Ms Phyllis POON
Senior Government Counsel

Miss Cindy CHEUK
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

I Meeting with the Administration

(LC Paper No. CB(1)667/12-13(01) -- List of follow-up actions arising
from the discussion at the meeting
on 27 February 2013

LC Paper No. CB(1)667/12-13(02) -- Administration's response to the
issues arising from the discussion
at the meeting held on
27 February 2013

- LC Paper No. CB(1)667/12-13(03) -- Administration's paper on proposed amendments to the Companies (Directors' Report) Regulation and Companies (Summary Financial Reports) Regulation
- LC Paper No. CB(1)667/12-13(04) -- Letter dated 26 February 2013 from The Hong Kong Institute of Directors on its views on certain subsidiary legislation made under the new Companies Ordinance (English version only)
- LC Paper No. CB(1)667/12-13(05) -- Administration's response to the letter dated 26 February 2013 from The Hong Kong Institute of Directors on its views on certain subsidiary legislation made under the new Companies Ordinance)

Other relevant papers

- (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
- LC Paper No. CB(1)610/12-13(01) -- List of follow-up actions arising from the discussion at the meeting on 21 February 2013
- LC Paper No. CB(1)610/12-13(02) -- Administration's response to the issues arising from the discussion at the meeting held on 21 February 2013)

Discussion

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

Follow-up action to be taken by the Administration

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

Companies (Directors' Report) Regulation

- (a) To consider issuing guidelines/practice notes with examples on the new requirement for companies to provide a summary of the reasons for a director's resignation in the directors' report under section 8 of the Regulation, including the scope of application of the section, the manner in which a notice of reasons should be given by the resigning director and a summary of the reasons should be prepared by the company.
- (b) To review the reference of "relating to the affairs of the company" in the Administration's proposed amendments to section 8(1)(b) of the Regulation with a view to including reasons for a director's resignation that relate to the affairs of a company, its parent company or its subsidiary companies.

Companies (Summary Financial Reports) Regulation

- (c) To review the drafting of section 4(5)(a) of the Regulation in the Chinese text to maintain consistency in drafting with the English text.

Chinese version of the proposed amendments to the Companies (Directors' Report) Regulation and the Companies (Summary Financial Reports) Regulation

- (d) To provide the Chinese text of the proposed amendments to the captioned two Regulations.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)687/12-13(02) on 11 March 2013.)

II Any other business

Date of next meeting

3. Members agreed to hold the next meeting on Monday, 11 March 2013, at 10:45 am.

(Post-meeting note: With the concurrence of the Chairman, the fourth meeting was held on Tuesday, 12 March 2013 at 9:00 am, and members were informed accordingly via the notice of meeting (LC Paper No. CB(1)679/12-13) issued on 7 March 2013.)

4. There being no other business, the meeting ended at 12:27 pm.

Council Business Division 1
Legislative Council Secretariat
20 August 2013

**Proceedings of the Subcommittee on Subsidiary Legislation Made under
the New Companies Ordinance
Third meeting on Wednesday, 6 March 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000541 – 000745	Chairman	Opening remark	
000746 – 001325	Administration	Briefing by the Administration on its response to members' views and concerns raised at the meeting on 27 February 2013. (LC Paper No. CB(1)667/12-13(02))	
001326 – 001923	Administration	Briefing by the Administration on its response to the submission dated 26 February 2013 from The Hong Kong Institute of Directors on the first batch of subsidiary legislation made under the new Companies Ordinance ("CO"). (LC Paper Nos. CB(1)667/12-13 (04) and (05))	
001924 – 002358	Administration	Briefing by the Administration on its proposed amendments to Companies (Directors' Report) Regulation (L.N. 10) and Companies (Summary Financial Reports) Regulation (L.N. 11). (LC Paper No. CB(1)667/12-13(03))	
002359 – 002929	Mr SIN Chung-kai Mr CHUNG Kwok-pan Chairman Administration	<p><u>Companies (Directors' Report) Regulation (L.N. 10 of 2013)</u></p> <p>Mr SIN considered that the requirement for companies to provide a summary of the reasons of a director's resignation or refusal to stand for re-election was an enhancement to corporate governance. However, he expressed concern that the reasons given by a director to the company might not be the real reasons. He enquired whether the company would be liable for disclosing false information in the summary of reasons if such information was provided by the director.</p> <p>The Chairman remarked that the company could not verify whether the reasons given by a director were true or otherwise.</p> <p>Mr CHUNG observed that a director might resign because of disagreement with the company's board but give other reasons, e.g. health reasons, instead. As such, he queried the usefulness of such</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>information in enhancing corporate governance and members' understanding of the reasons for a director's resignation and problems, if any, in the senior management of the company.</p> <p>The Administration advised that –</p> <p>(a) the requirement under section 8 of the Regulation was to enhance corporate transparency by providing a channel for a resigning director to make known the reasons of resignation and, if the reasons were due to disagreement with the company's board, imposing a requirement on the company to provide a summary of such reasons;</p> <p>(b) given the difficulty for the company to verify whether the reasons provided by the director were genuine or otherwise, it would be more appropriate to require the company to make the disclosure based on the reasons provided by the director; and</p> <p>(c) as there might be numerous reasons for a director to resign from the board or not to stand for re-election, the Administration considered that the director would be in an appropriate position in deciding whether to provide and what reasons should be provided to the company. If the reasons given by the director did not relate to the affairs of the company (e.g. health reasons), the company was not required to make the disclosure.</p>	
002930 – 003556	Mr Dennis KWOK Chairman Administration	<p>Discussion on the Administration's proposed amendments to section 8(1)(a) of the Regulation, i.e. the resigning director to provide reasons for resignation which were "relating to the affairs of the company", vis-à-vis the original provision that the reasons were due to "disagreement with the board of directors of the company".</p> <p>Mr KWOK enquired whether "relating to the affairs of the company" would include affairs of the company's subsidiaries, and if so, it should be stated clearly in section 8(1)(a). He was concerned that a company might circumvent the disclosure requirement by claiming that the reasons given by the director were related to the company's subsidiaries but not the company itself.</p>	The Administration to take action as required in paragraph 2(b) of the minutes.

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		<p>The Chairman opined that it was difficult to specify details on "the affairs of the company" in the Regulation, and considered that a more flexible approach should be adopted in setting the requirement to facilitate compliance by the company.</p> <p>In the light of Mr KWOK's concern, ALA7 commented that if it accorded with the policy, the Administration might consider amending the provision to require disclosure of reasons for a director's resignation or refusal to stand for re-election if the reasons were related to "a specified undertaking of the company", which would then include the affairs of the company's parent company, its subsidiary undertakings, and subsidiary undertakings of the parent company.</p> <p>The Administration advised that the reference "relating to the affairs of the company" was appropriate and sufficiently broad to include a wide range of affairs of the company, including those of its parent company or its subsidiaries if the affairs were related to the company in anyway.</p>	
003557 – 003756	Mr SIN Chung-kai Administration	<p>Mr SIN enquired about liabilities, if any, on a resigning director if the reasons he/she had provided to the company in writing were different from those he/she had informed other parties.</p> <p>The Administration advised that there were no provisions in the new CO or the Regulation governing the validity of reasons to be given by the director in this respect. It would also be difficult to verify whether the reasons provided by the director were genuine.</p>	
003757 – 004246	Mr James TO Administration	<p>Mr TO welcomed the Administration's proposed amendments to section 8(1)(a) of the Regulation. He remained concerned that, if a company was required to give a summary of the reasons for a director's resignation only, the summary could be selective and biased. He suggested setting a threshold for full disclosure, e.g. if the reasons given by a resigning director did not exceed a certain number of words or pages, the contents should be disclosed in full instead of a summary. This would help minimize disputes among the relevant parties, as well as reduce enforcement</p>	

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		<p>burden and court action in relation to the objectivity of the summary.</p> <p>The Administration pointed out that as the reasons given by a director might include both personal reasons and reasons relating to the affairs of the company, setting a threshold for requiring full disclosure of the document given by the director with criteria such as number of pages or words might not be suitable in such cases. Nevertheless, the Regulation did not prohibit a company from making full disclosure of the reasons, which might be the case if the reasons given by the director were concise and not lengthy.</p>	
004247 – 005059	Mr Dennis KWOK Dr Kenneth CHAN Deputy Chairman Administration Chairman	<p>Mr KWOK considered that, as companies might avoid compliance by adopting a narrow interpretation of "affairs of the company" in the proposed amendments to section 8(1)(a) of the Regulation, he agreed with ALA7's view that consideration should be given to require the reporting company to disclose the reasons if they were related to the affairs of "a specified undertaking of the company" so as to include the affairs of the reporting company's parent company, its subsidiary undertakings, or subsidiary undertakings of the parent company.</p> <p>The Administration advised that adopting the reference of "a specified undertaking of the company" would unduly expand the scope of disclosure and increase compliance burden on the reporting company. It should be noted that there were numerous cases of directors' resignation each year, i.e. over 8 000 cases for all public companies and over 78 000 cases for all companies in 2012.</p> <p>In relation to the requirement in section 8(1)(b) of the Regulation for a company to give a summary of reasons for a director's resignation in the directors' report, the Chairman enquired if the term "summary" was defined in the Regulation.</p> <p>Mr KWOK suggested adding the reference of "fair and objective" before "summary" to set certain standards for the summary to be provided by a company.</p>	The Administration to take action as required in paragraph 2(a) of the minutes.

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		<p>Dr CHAN opined that, if it was specified in section 8 of the Regulation that the summary should be "fair and objective", a company might need to present its views on the reasons given by a resigning director in order to achieve fairness and objectivity.</p> <p>The Administration advised that the term "summary" was not defined in the Regulation. There were no provisions in the Regulation prohibiting a company from giving its views in the directors' report responding to the reasons provided by the resigning director.</p> <p>The Deputy Chairman suggested issuing guidelines/practice notes with examples on the new requirement for companies to provide a summary of the reasons for a director's resignation or refusal to stand for re-election in the directors' report under section 8 of the Regulation, including the scope of application of the section, the manner in which a notice of reasons should be given by the resigning director and a summary of the reasons should be prepared by the company.</p> <p>The Chairman emphasized the need for companies and practitioners to understand the disclosure requirements so as to facilitate compliance.</p> <p>The Administration advised that the Companies Registry would strengthen publicity and consider issuing an external circular to explain the details to practitioners.</p>	
005100 – 005326	Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG re-iterated concern that the disclosure requirement might not achieve the objective in enhancing corporate transparency if the reasons given by the director were not the true reasons for resignation.</p> <p>The Administration believed that the new disclosure requirement would help enhance corporate governance and transparency as under the existing CO, a company was not obliged to disclose the reasons of resignation by a director at all even if they were related to important affairs of the company.</p>	

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005327 – 005512	Chairman Mr Dennis KWOK Administration	<p>The Chairman enquired whether the Administration would review the reference of "the affairs of the company" in its proposed amendments to section 8(1)(b) of the Regulation in the light of comments from Mr KWOK and ALA7.</p> <p>The Administration remarked that the suggested reference of "a specified undertaking of the company" might unduly widen the scope of affairs for disclosure to include affairs wholly unrelated to the reporting company. Nonetheless, it would consider members' views.</p>	The Administration to take action as required in paragraph 2(b) of the minutes.
005513 – 005733	Deputy Chairman Administration	<p>Briefing by the Administration on its proposed amendments to disclosure requirements in the directors' report in relation to debentures. (paragraphs 5 to 7 of LC Paper No. CB(1)667/12-13(03))</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that the disclosure requirement would include all debentures arrangements that would enable directors of a company to acquire benefits by means of acquisition of the debentures of the company or another body corporate.</p> <p>As regards guidelines for companies and practitioners on the disclosure requirements in relation to debentures, the Administration advised that disclosure relating to debentures was a requirement under the existing CO, which was reinstated in the Regulation having regard to members' concerns raised at the last meeting. The Administration would inquire whether further assistance was required by practitioners for compliance with the requirement in this regard.</p>	
005934 – 010102	Administration	<p>Briefing by the Administration on its proposed amendments to section 9 of the Regulation on permitted indemnity provisions. (paragraph 8 of LC Paper No. CB(1)667/12-13(03))</p>	
010103 – 011414	ALA7 Deputy Chairman Chairman Administration	<p>Briefing by the Administration on its proposed amendments to the Regulation with regard to the addition of disclosure requirement on information concerning material interests in the directors' report. (paragraphs 9 to 12 of LC Paper No. CB(1)667/12-13(03))</p>	

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		<p>ALA7 noted that under the new section 10(3) in the Administration's proposed amendment to the Regulation, a director of a public company was treated as having a material interest in a transaction, arrangement or contract entered into by a specified undertaking of the company if a connected entity of that director had a material interest in that transaction, arrangement or contract. On the other hand, section 10(6) of the proposed amendment provided that an interest that a director of a company had in a transaction, arrangement or contract was not material if, after consideration, the directors of the company were of the opinion that it was not material. She sought clarification whether consideration of the material interest of a director's connected entity in a transaction etc. in section 10(3) was also subject to the condition in section 10(6), i.e. the opinion of other directors of the company.</p> <p>The Deputy Chairman observed that section 10(6) should be applicable to both sections 10(1) and 10(3), i.e. the materiality of interest of both a director and the connected entities of the director was subject to the opinion of the company's board.</p> <p>The Administration explained that Division 5 of Part 11 of the new CO imposed new disclosure requirements to expand the scope of disclosure to transactions and arrangements in addition to contracts. Moreover, in the case of a public company, there were additional disclosure requirements in respect of connected entities. To achieve consistency with this part of the principal ordinance, section 10(3) of the Regulation stipulated the disclosure requirement in respect of the material interest of <u>a connected entity of director</u> (e.g. the director's relatives). The proposed new section 10(6) of the Regulation was to re-enact the requirements under the existing CO which provided that the materiality of an interest would be subject to the consideration of the directors of the company.</p> <p>The Chairman and Deputy Chairman observed that a person might be the director of a company as well as the director of a number of specified undertakings of the company. They sought clarification whether disclosure of information</p>	

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		<p>concerning the material interest of a director should be made in the directors' report of the company as well as every report of the specified undertakings of which the person was also a director.</p> <p>The Administration advised that the disclosure requirement applied to the specified undertaking only if the person was also a director of the specified undertaking <u>and</u> the transaction, etc. in question were significant to the business of that specified undertaking. The significance of the transaction, etc. was determined in relation to the business of the reporting company.</p>	
Clause-by-clause examination of the subsidiary legislation			
011415 – 011838	Administration	<p><u>Companies (Summary Financial Reports) Regulation (L.N. 11 of 2013)</u></p> <p>Part 1 - Preliminary</p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Interpretation</u></p> <p>Part 2 – Summary Financial Report</p> <p><u>Section 3 – Form and contents of summary financial report: general</u></p> <p>Briefing by the Administration on its proposed amendments to the Regulation to align with the policy intent that any information or particulars about benefits of directors which were required to be disclosed in the notes to financial statements pursuant to the Companies (Disclosure of Information about Benefits of Directors) Regulation must also be contained in a summary financial report of the company concerned. (paragraphs 13 to 15 of LC Paper No. CB(1)667/12-13(03)).</p> <p>Members raised no questions.</p>	
011839 – 012140	ALA7 Administration	<p><u>Section 4 – Form and contents of summary financial report: auditor's report and opinion</u></p> <p>ALA7's comment that the reference of "互相抵觸" in the Chinese text of section 4(5)(a) of the</p>	The Administration to take action as required in paragraph 2(c) of

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		<p>Regulation did not align with the reference of "consistent with" in the English text.</p> <p>The Administration advised that it would replace the reference of "互相抵觸" by "相符" in the Chinese text.</p>	the minutes.
012141 – 012531	Deputy Chairman Administration	<p>The Deputy Chairman enquired if there was a requirement for including a statement in the auditor's report and the summary financial report if the auditor held a positive opinion that adequate accounting records had been kept by the company and the company's financial statements were in agreement with its accounting records.</p> <p>The Administration advised that section 407 of the new CO only required an auditor to state in the auditor's report if he/she was of opinion that adequate accounting records had <u>not</u> been kept by the company; or the company's financial statements were <u>not</u> in agreement with its accounting records in any material respect. The provision did not preclude an auditor from making a statement in the auditor's report and the summary financial report if they held a positive opinion on the above matters.</p>	
012532 – 013015	Administration	<p><u>Section 5 – Form and contents of summary financial report: other matters</u></p> <p>Briefing by the Administration on its proposed deletion of sections 5(1) and 5(2) of the Regulation</p> <p><u>Section 6 – Other requirements in relation to form of summary financial report</u></p> <p>Members raised no questions.</p>	
013016 – 013531	ALA7 Mr James TO Chairman Administration	<p>Part 3 – Notification and Notice of Intent, etc.</p> <p><u>Section 7 – Form and contents of notification for seeking member's intent on receiving summary financial report</u></p> <p>ALA7 noted that two different references "送抵公司" and "收到" were used in the Chinese text of section 7(3)(d), 7(4)(a) and 7(4)b of the Regulation for the same reference of "received by the company" used in the English text of the relevant</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>section. As there might be discrepancy in time for a document to be "delivered to" and "received by" the company, ALA7 invited the Administration to consider aligning the English and Chinese text to achieve consistency in the use of the references.</p> <p>The Chairman remarked that a document might be delivered to the mail box of a company but was actually not received by the company. For example, the mail might be stolen from after it was delivered. He suggested replacing the Chinese text of "送抵" by "收到" to avoid disputes about whether the documents had been actually received by the company.</p> <p>Mr TO shared the view, but added that mails were usually delivered to the receptionist of a company. When this was done, the mails were "received" by the company. In reality, there might not be much room for arguments as to whether a document was received by the company.</p> <p>The Administration advised that "送抵公司" was used in the Chinese text of section 7(3)(d) of the Regulation because it was referring to the card or document mentioned in section 10. The Administration considered that "送抵公司" could adequately convey the meaning that the card/document had been delivered to as well as received by the company. Whereas the reference "送交" used in other parts of the Regulation referred to a document that was "sent" to the company.</p>	
013532 – 013829	Administration	<p><u>Section 8 – Additional provisions as to contents of notification under section 7</u></p> <p><u>Section 9 – Company may include other information in notification</u></p> <p><u>Section 10 – Notification attached with card or document</u></p> <p><u>Section 11 – Postage</u></p> <p>Members raised no questions.</p>	

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013830 – 013919	Chairman Administration	<p>The Chairman requested the Administration to provide the Chinese text of the proposed amendments to the Companies (Directors' Report) Regulation and the Companies (Summary Financial Reports) Regulation.</p> <p>The Administration agreed to take follow-up action accordingly.</p>	The Administration to take action as required in paragraph 2(d) of the minutes.
013920 – 014335	Mr Dennis KWOK Dr Kenneth CHAN Chairman Administration	Discussion on the way forward and date of next meeting	

Council Business Division 1
Legislative Council Secretariat
20 August 2013