

立法會
Legislative Council

LC Paper No. CB(1)1395/17-18
(These minutes have been seen
by the Administration)

Ref : CB1/BC/7/17/2

Bills Committee on Companies (Amendment) Bill 2018

**Minutes of the first meeting on
Friday, 25 May 2018, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Christopher CHEUNG Wah-fung, SBS, JP
(Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Kenneth LEUNG
Hon CHUNG Kwok-pan
Hon CHAN Chun-ying
- Members absent** : Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
- Public officers attending** : Ms Winnie NG Ching-ching, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)
- Mr TE Chi-wang
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 6

Miss Jeanne FUNG Yuen-sin
Assistant Secretary for Financial Services and the
Treasury (Financial Services)(6)1

Ms Ada CHUNG Lai-ling, JP
Registrar of Companies

Mrs Karen HO LAU Kar-kam
Consultant (Company Law)
Companies Registry

Ms Ellen CHAN Wai-ling
Deputy Principal Solicitor (Company Law Reform)
Companies Registry

Mr Jonathan LUK King-hang
Senior Government Counsel
Department of Justice

Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

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

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Sharon LO
Senior Council Secretary (1)9

Ms Sharon CHAN
Legislative Assistant (1)4

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I Election of Chairman (and Deputy Chairman)

Election of Chairman

Mr James TO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee, and invited nominations.

2. Mr Christopher CHEUNG was nominated by Mr CHAN Chun-ying and the nomination was seconded by Mr WONG Ting-kwong. Mr CHEUNG accepted the nomination. There being no other nomination, Mr James TO declared that Mr Christopher CHEUNG was elected the Chairman of the Bills Committee. Mr CHEUNG then took the chair.

3. Members agreed that there was no need to elect a Deputy Chairman.

Application for late membership

4. The Chairman referred members to the letter from Dr Junius HO applying for late membership which was tabled at the meeting. He then invited members to consider Dr HO's application. Members considered and accepted Dr HO's application.

(Post-meeting note: The letter from Dr Junius HO dated 24 May 2018 was issued to members vide LC Paper No. CB(1)1013/17-18 on 25 May 2018.)

II Meeting with the Administration

(LC Paper No. CB(3)488/17-18	— The Bill
File Ref: CO/2/2C(2018)	— Legislative Council Brief
LC Paper No. LS53/17-18	— Legal Service Division Report
LC Paper No. CB(1)1005/17-18(01)	— Marked-up copy of the Companies (Amendment) Bill 2018 prepared by the Legal Service Division (Restricted to members only)

Action

LC Paper No. CB(1)1005/17-18(02) — Background brief prepared by the Legislative Council Secretariat)

Discussion

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

III Any other business

Invitation of views

6. The Bills Committee agreed to post a notice on the website of the Legislative Council ("LegCo") and write to the 18 District Councils ("DCs") and relevant organizations to invite views on the Companies (Amendment) Bill 2018; and to meet with deputations at the second meeting to be held on 19 June 2018.

(Post-meeting note: The notice was posted on LegCo website on 29 May 2018 and letters were sent to DCs and relevant organizations on 29 May 2018.)

Date of next meeting

7. The Chairman said that the next meeting would be held on 19 June 2018 at 9:00 am.

(Post-meeting note: The second meeting was scheduled for 19 June 2018 to meet with deputations and conduct clause-by-clause examination of the Bill. The notice of meeting was issued vide LC Paper No. CB(1)1014/17-18 on 25 May 2018.)

8. There being no other business, the meeting ended at 9:28 am.

**Proceedings of the first meeting of
the Bills Committee on Companies (Amendment) Bill 2018
on Friday, 25 May 2018, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman (and Deputy Chairman)			
000407 – 000555	Mr James TO Mr CHAN Chun-ying Mr WONG Ting-kwong Mr Christopher CHEUNG	Election of Chairman	
000556 – 000642	Chairman	Members considered and accepted Dr Junius HO's application for late membership.	
Agenda item II — Meeting with the Administration			
000643 – 002400	Chairman Administration	Briefing by the Administration on the Companies (Amendment) Bill 2018 ("the Bill"). [LC Paper No. CB(1) 1015/17-18(01), powerpoint presentation materials issued after the meeting]	
002401 – 002846	Chairman Mr Kenneth LEUNG Administration	Mr LEUNG noted that under the Bill, holding companies of groups of small private companies, eligible private companies, small guarantee companies, or the mixed groups could benefit from the simplified reporting arrangement even if the group comprised non-Hong Kong subsidiaries. He enquired about the size criteria of the non-Hong Kong subsidiaries and the difference between small private companies and eligible private companies. He also asked whether there would be changes to the annual audit requirements on companies. The Administration advised that – (a) to benefit from the simplified reporting arrangement, the holding company and	

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		<p>all of its subsidiaries, including non-Hong Kong subsidiaries, had to meet the applicable specified size criteria, e.g. not exceeding HK\$100 million assets, HK\$100 million revenue and 100 employees for a group of small private companies;</p> <p>(b) small private companies were private companies meeting the specified size criteria, and could automatically benefit from the simplified reporting arrangement;</p> <p>(c) eligible private companies were companies meeting higher size criteria, i.e. not exceeding HK\$200 million assets, HK\$200 million revenue and 100 employees, and simplified financial reports could be prepared if their members holding 75% of the voting rights so resolved and no other member raised objection; and</p> <p>(d) most amendments proposed in the Bill were technical amendments incorporating new developments after the commencement of the new Companies Ordinance (Cap. 622) ("new CO") and clarifying the policy intent or removing ambiguities and inconsistencies. No substantial changes had been introduced to the existing statutory framework under the new CO.</p>	
002847 – 003106	Chairman Mr CHUNG Kwok-pan Administration	Mr CHUNG said that the proposed amendments were technical in nature, and considered that the Administration should explain how they could provide more flexibility to small and medium-sized enterprises ("SMEs") and help minimize their compliance cost.	

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		<p>The Administration said that –</p> <ul style="list-style-type: none"> (a) the Bill sought to simplify statutory procedures and remove ambiguities and inconsistencies with a view to reducing the compliance cost of companies and catering for the needs of SMEs. The proposed changes would not change the policy intent of the new CO; and (b) the Administration would explain the provisions of the Bill in greater detail (including the background and views from relevant stakeholders) during clause-by-clause examination of the Bill. 	
003107 – 003734	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN sought details on –</p> <ul style="list-style-type: none"> (a) the purposes of amending the small payments exception to the restrictions on payments for loss of office as director; (b) the proposed amendments under the Bill relating to the record-keeping requirements; and (c) measures adopted by the Administration to prevent inconsistency in the terminology used between the English text and the Chinese text when drafting legislation. <p>The Administration explained that –</p> <ul style="list-style-type: none"> (a) according to the new CO, a company must not make a payment for loss of office to a director or former director of the company without approval of its members, except small payments which did not exceed HK\$100,000. The proposed amendments in this regard sought to clarify the calculation of small payments; and 	

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		<p>(b) the Bill also sought to clarify that (i) a company must keep records of resolutions passed by its directors without a meeting, and (ii) a company would not be required to notify the Registrar of Companies of change in the place at which a specified record was kept if the change was due to a change in the company's registered office; and</p> <p>(c) it would endeavour to avoid inconsistency in the terminology used between the English text and the Chinese text in drafting legislation.</p>	
003735 – 004147	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG enquired why the Bill did not contain proposals for allowing subsidiaries of different holding companies to adopt the court-free procedure when carrying out horizontal amalgamation.</p> <p>The Administration explained that under the new CO, two or more subsidiaries of a holding company could amalgamate through a court-free procedure. The proposed amendments in this respect sought to clarify the policy intent that such court-free procedure for horizontal amalgamation would apply to subsidiaries of a holding company incorporated outside Hong Kong so long as the merging companies (i.e. the subsidiaries) were Hong Kong companies.</p>	
004148 – 004452	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN enquired about the publicity and promotional work the Administration planned to conduct to enhance public awareness of the details and benefits of the proposed amendments in the Bill.</p> <p>The Administration responded that the Companies Registry would step up publicity so that companies including SMEs and relevant stakeholders would better understand the proposed amendments. For example, issuing letters to registered</p>	

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		<p>companies on the details of the amendments, setting up a designated hotline to answer enquiries, arranging seminars to explain the details to professional bodies, trade associations, etc., and distributing promotional leaflets to stakeholders.</p>	
004453 – 005208	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG enquired about the proposal allowing a company with both English and Chinese names to display either its English or Chinese name. He was of the view that a company should be required to display both its English and Chinese names in its registered office if it had both English and Chinese names. He considered that the Administration should review the matter in a future legislative exercise.</p> <p>The Administration explained that –</p> <p>(a) if a company had both English and Chinese names, its articles of association must state both names; and</p> <p>(b) the policy intent was to enable a company to use either its English or Chinese name for purposes other than in the articles of association, e.g. the company's common seal, its business cards and stationeries, etc.</p>	
005209 – 005513	Chairman Mr CHUNG Kwok-pan Administration	<p>Mr CHUNG sought information on the soft consultation conducted by the Administration in 2016 to gauge views from stakeholders on the proposed amendments to the new CO, in particular if the Administration had consulted relevant SMEs associations.</p> <p>The Administration said that it had consulted relevant stakeholders in 2016, including professional bodies (e.g. the Hong Kong Association of Banks, the Hong Kong Bar Association, the Hong Kong Institute of Certified Public Accountants, etc.), chambers of commerce, SMEs associations, as well as the Standing</p>	

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		<p>Committee on Company Law Reform. Moreover, a designated hotline was set up in 2014 to answer enquiries and receive comments and feedback from the public when the new CO commenced operation.</p> <p>Mr CHUNG suggested that the Bills Committee should hold a public hearing on the Bill.</p>	
005514 – 005916	Chairman Administration	<p>The Chairman raised the following enquiries –</p> <ul style="list-style-type: none"> (a) whether the proposed amendments to the new CO would affect the corporate governance and transparency of companies; (b) the reasons for setting HK\$100 million assets, HK\$100 million revenue and 100 employees as the threshold of small private companies; and (c) the benefits of the proposed amendments (e.g. to attract overseas companies to set up offices in Hong Kong). <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) the proposed amendments aimed to improve the clarity and operation of the new CO and to further facilitate business in Hong Kong without changing the policy intent and the regulatory framework of the new CO; (b) the size criteria of small private companies was developed during the exercise to rewrite the predecessor Companies Ordinance (Cap. 32) after taking into account views and comments received from stakeholders; and (c) the Government would continue to step up efforts in attracting overseas 	

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		companies to establish and expand their operations in Hong Kong.	
005917 – 010047	Chairman Mr CHUNG Kwok-pan Administration	Mr CHUNG asked if the Administration would consider reviewing the size criteria, in particular the assets and revenue (e.g. adjusting them to HK\$200 million), of small private companies having regard to factors like inflation, capital costs, etc. The Administration responded that the proposed amendments under the Bill had already taken into account the concerns and technical issues raised by stakeholders since the commencement of the new CO.	
Agenda item III — Any other business			
010048 – 010151	Chairman Mr CHUNG Kwok-pan	Invitation of views and date of next meeting	