LC Paper No. CB(1)645/99-00

Ref: CB1/BC/11/98/2

Bills Committee on
Companies (Amendment) Bill 1999

Minutes of meeting held on
Friday, 7 May 1999, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present	:	Hon Albert HO Chun-yan (Chairman) Hon James TIEN Pei-chun, JP Hon HO Sai-chu, JP Hon HUI Cheung-ching Hon CHAN Kam-lam Hon SIN Chung-kai Hon Mrs Miriam LAU Kin-yee, JP Hon FUNG Chi-kin
Members absent	:	Hon Kenneth TING Woo-shou, JP Hon Eric LI Ka-cheung, JP
Public officers attending	:	Miss Julina CHAN Principal Assistant Secretary for Financial Services Mr G W E Jones Registrar of Companies Mr E T O' Connell Registry Solicitor Ms Shandy LIU Senior Government Counsel Miss TSE Woon-ping Chief Assessor Inland Revenue Department Mrs TANG LI Suk-yee

Senior Assessor
Inland Revenue Department

Attendance by invitation : Miss Winnie CHEUNG
Director of Professional Practices
Hong Kong Society of Accountants

Clerk in attendance : Ms Estella CHAN
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Connie SZETO
Senior Assistant Secretary (1)1

I Discussion with the Administration
(LC Paper No. CB(1)1269/98-99(01) & (02))

Deregistration of solvent, defunct private companies

The Chairman informed members that the two information papers circulated to members before the meeting included the Administration's analyses of the 1,305 cases of objections from the Inland Revenue Department (IRD) to "striking-off" of companies by the Registrar of Companies (R of C) in 1998-99 and the $350 charge for obtaining the "no-objection" notice from the Commissioner of Inland Revenue (CIR), and the Hong Kong Institute of Company Secretaries (HKICS)'s further submission proposing to delete from the Bill the requirement on companies to obtain the 'no-objection notice' prior to the application for deregistration.

2. Responding to a member's enquiry about the analysis of the 1,037 objection cases provided by IRD, the Chief Assessor, IRD (CA/IRD) supplemented that about 550 cases involved tax liabilities varying from $1 to $100,000 and some 200 cases involved tax liabilities ranging from $100,000 to $500,000. There were two cases with tax liabilities exceeding $10 million one of which involved an amount of $40 million. As regards the reasons for not discovering such private companies owing large amounts of tax until they were about to be struck off the register, CA/IRD explained that some of the cases might involve tax avoidance schemes on the part of the companies. Very often, there might also be cases where companies might have different views on the

chargeability of tax of some cases under the current tax system. In following up the objection cases, IRD would initiate enquiries and take appropriate actions against the company directors and officers with a view to recovering the outstanding tax.

3. Members generally supported the proposed tax clearance procedure of the new deregistration arrangement. They considered the procedure justified and the fee of $350 for issuing the "no-objection" notice necessary to recover the full cost of providing the service. CA/IRD re-assured members that IRD would endeavour to meet its performance pledge of providing a reply for such application in about a month.

Clause-by-clause examination on the Bill

4. Members raised queries on the following clauses during the examination.

Clause 3

5. The Registrar of Companies (R of C) explained that the amendment which required a company, after altering its articles, to deliver to R of C an up-dated and complete version of the articles would facilitate the search for information on companies. The benefits would definitely outweigh the additional cost to be incurred by companies. Indeed, past experience revealed that companies seldom altered their articles. For instance, out of a total of about 500,000 companies on the register, only 3,274 amendments regarding articles of companies were filed in 1998. The Administration considered that the 15-day period within which companies were required to file the altered articles would be achievable by companies as they were able to comply with the existing statutory requirement in respect of amendments to their memoranda of association.

Clause 4

6. The Registry Solicitor (RS) pointed out that clause 4(a) was to rectify an omission in the Companies (Amendment) Ordinance 1991 where section 48B(3)(c) of the Companies Ordinance (CO) (Cap.32) should have been repealed as it was inconsistent with section 49A(1)(b).

Clause 5

7. Miss Winnie CHEUNG of the Hong Kong Society of Accountants (HKSA) took members through this clause which contained provisions on merger relief.

8. The Principal Assistant Secretary for Financial Services said that in response to members' concern expressed at the last meeting, and with reference to

section 49Q(4) of CO, the Administration had proposed a Committee Stage Amendment (CSA) to give effect that regulations to be made by the Financial Secretary (FS) under section 48F would be approved by resolution of the Legislative Council (LegCo). The draft CSA was tabled at the meeting for members' consideration.

9. Members supported the draft CSA which relieved their concern about the provisions of regulations taking effect before the expiry of the 28-day scrutiny period under the negative vetting procedure. However, they expressed concern about retaining the proposed section 48F(3), which had the effect that the provisions of regulations made under this section should prevail over the provisions in the principal ordinance.

10. The Senior Government Counsel explained that the enabling provisions relating to merger relief in the proposed section 48F of the Bill were basically modelled on the U.K. Companies Act 1985. The purpose of the provisions under the proposed section 48F(3), which were not present in the Act, was to put beyond doubt the validity of regulations to be made by FS under this section, which might, among other things, restrict or otherwise modify any relief from the relevant requirements provided by new sections 48C to 48E.

11. Members were of the view that the proposed section 48F(3) had given rise to an important legal issue. They considered that as the making of provisions in ordinances required more elaborate scrutiny procedures by LegCo than the making of regulations, it was unacceptable that regulations, which were subsidiary legislation, should prevail over the principal ordinance.

12. RS remarked that the proposed section 48F intended to give the business sector flexibility with respect to the extension or restriction on merger relief. In view of the grave concern expressed by members, the Administration agreed to move an appropriate CSA to delete section 48F(3).

Admin

13. On consultation of concerned parties regarding provisions relating to merger relief, members noted that the proposal had been discussed and supported by the Standing Committee on Company Law Reform (SCCLR) which comprised representatives of various sectors, inter alia, the legal profession, HKSA, HKICS, the business community, the Securities and Futures Commission, the Exchanges and the Hong Kong Monetary Authority. As regards whether the Chinese General Chamber of Commerce (CGCC) had been consulted, R of C said that it was a common practice of SCCLR to consult professional bodies and the business community as well as other concerned parties on major policy issues. He undertook to check past records on whether CGCC had been consulted on the policy aspects of the proposal and advise the Bills Committee after the meeting.

Admin

(*Post-meeting note*: The Administration confirmed in its reply circulated to members vide LC Paper No. 1344/98-99 dated 18 May 1999 that CGCC had been consulted on the proposal in 1993.)

Clause 11

14. Members noted that this clause was to delete the requirement for companies to report other directorships of its directors, which would no longer be necessary when the Companies Registry (CR)'s new directors' index came into operation. R of C stressed that the statutory requirement for company directors to report changes on their directorships with companies would remain. On the new directors' index system, R of C advised that it would be a comprehensive and fully computerised data base on directorships. Searches could be made in either languages. Tendering for the provision of the system was underway and it was envisaged that the system would come into operation within the 1999-2000 financial year. In this connection, the Chairman requested the Administration to provide an information paper on the new index system to the Financial Affairs Panel when the system was ready.

Admin

Clause 22

15. Addressing the concern about the difficulty for a company to get support from all its members on deregistration, RS said that it was considered fundamental to obtain unanimous agreement of all members of the company in order to avoid possible disputes that might arise. Since the vast majority of companies on the register were small sized companies usually with two to three members, there should be no difficulty for these companies to comply with the requirement. On the other hand, in the event that unanimous agreement was not obtained, companies could make use of other deregistration avenues, such as voluntary winding-up.

16. As regards the need for companies to submit documents to substantiate their deregistration applications, RS said that R of C might assume without verification that the information given in connection with the application was true. Criminal sanction was prescribed under proposed section 291AA(14) for applicants knowingly or recklessly giving false information.

17. Concerning the application form for the deregistration procedure, R of C advised that a new application form would be drafted for the purpose. The new form would be available when the new procedure was implemented, which, pending the passage of the Bill, was envisaged to be in September 1999.

Clause 25

18. Members were concerned that the new section 303B would provide too much protection for R of C and other public officers, who would not be liable for any error or omission of computerised information which the CR provided for the purposes of CO. Having checked corresponding provisions in section 23A of the Land Registration Ordinance (Cap. 128), which did not seem to offer such a high degree of protection to the Land Registrar, and similar provisions in other ordinances, members were of the view that the other provisions did not protect Government officers to such an extent.

19. In response, RS advised that the new section 303B was based on sections 16 and 16A of the Singapore Companies Act. He said that CR received numerous document yearly and under section 348A of CO, R of C was not held responsible for verifying any statement made in any document delivered to him for registration. Despite the very good quality control in place to ensure the accurate conversion of information, mistakes might still be made. The protection was considered particularly necessary when the computerised information data base was put into operation. He further supplemented that for R of C or other officers to take advantage of the section, the error or omission committed had to be made in good faith and in the ordinary course of discharge of the officers' duties.

20. As regards the concern about serious damage or loss as a result of an omission to register a charge against a company on the part of CR, R of C explained that the new computerised data base would only reveal information as to whether a charge had been registered. The current arrangement where the details of the charge was put in paper form for public inspection at CR would continue.

21. Members remained concerned about the immunity against liability provided to public officers under the section and urged the Administration to consider proposing appropriate CSAs to address their concern. The Administration agreed to provide draft CSAs in this regard.

Admin

22. The Bills Committee considered that the remaining clauses were mostly technical in nature and that drafting issues could be resolved between the Administration and the Assistant Legal Adviser. Subject to appropriate CSAs to be moved by the Administration, including those amendments to clauses 5 and 25 as discussed above, the Bills Committee supported the Bill and would make recommendation to the House Committee for resuming Second Reading debate on the Bill in due course. The complete set of CSAs would be circulated for members' consideration as early as possible.

Admin

(*Post-meeting note:* The Bills Committee submitted a report, including the agreed draft CSAs provided by the Administration, to the House Committee at its meeting on 4 June 1999.)

III Any other business

23. Members noted that Miss CHAN Yuen-han had written to resign from the Bills Committee.

24. The meeting ended at 10:45 am.

Legislative Council Secretariat
20 December 1999