

立法會
Legislative Council

LC Paper No. CB(1)2375/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/SS/2/11/1

**Subcommittee on
Companies Ordinance (Exemption of Companies and Prospectuses
from Compliance with Provisions) (Amendment) Notice 2011**

**Minutes of the second meeting held on
Wednesday, 23 November 2011, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon James TO Kun-sun (Chairman)
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Alan LEONG Kah-kit, SC

Public officer attending : **Agenda item II**

Mr Anthony LI
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)2

Attendance by Invitation : **Agenda item II**

*Representatives from the Securities and Futures
Commission*

Mr Brian HO
Executive Director
Corporate Finance Division

Mr Charles GRIEVE

Senior Director
Corporate Finance Division

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

Staff in attendance : Miss Eyelyn LEE
Assistant Legal Adviser 10

Mr Simon CHEUNG
Senior Council Secretary (1)9

Action

I Confirmation of minutes

(LC Paper No. CB(1)382/11-12 -- Minutes of meeting on
11 November 2011)

The minutes of the meeting held on 11 November 2011 were confirmed.

II Meeting with the Administration and the Securities and Futures Commission

(LC Paper No. CB(1)412/11-12(01) -- Administration's paper on
the Companies Ordinance
(Exemption of Companies
and Prospectuses from
Compliance with
Provisions) (Amendment)
Notice 2011

LC Paper No. CB(1)412/11-12(02) -- Marked-up copy of the
Companies Ordinance
(Exemption of Companies
and Prospectuses from
Compliance with
Provisions) (Amendment)
Notice 2011)

Relevant papers

Action

(L.N. 143 of 2011

-- Companies Ordinance
(Exemption of Companies
and Prospectuses from
Compliance with
Provisions) (Amendment)
Notice 2011

LC Paper No. LS2/11-12

-- Legislative Council Brief
-- Legal Service Division
Report)

2. The Subcommittee deliberated (index of proceedings at the **Appendix**). In order to address members' concern as how the Amendment Notice could protect investors' interests while relieving the burden of companies in complying with property valuation and disclosure requirements for prospectuses when applying for listing, the Administration and the Securities and Futures Commission ("SFC") were requested to --

- (a) provide information on: (i) when the threshold of 10% or HK\$3 million in relation to property interests of companies as specified in paragraph 34(2) of the Third Schedule to the Companies Ordinance were put in place, (ii) background and rationale for setting these thresholds, and (iii) whether any review on the thresholds has been conducted since then;
- (b) explain the benefits of the proposed exemptions under the Amendment Notice on: (i) the operation of companies and their compliance cost, in particular for international corporations seeking listings in Hong Kong, (ii) investors, and (iii) Hong Kong's competitiveness as an international financial centre vis-à-vis similar requirements in other major financial centres;
- (c) provide a comparison of the current and proposed property valuation and disclosure requirements on companies using examples of companies with different core businesses, property activities, non-property activities, or mixture of both, to illustrate how the proposed exemptions would help reduce the compliance cost on companies, reduce the bulk of prospectuses thus be more environmental in the production of prospectuses without compromising investors' interests to have sufficient and comprehensive information about the companies; and

Action

- (d) explore members' suggestion for companies to provide full details of a valuation report on property interests by electronic means, or to set out the details in appendices to the prospectus, which would help reduce the compliance cost on companies and ensure protection for investors at the same time.

III Any other business

3. Members agreed that the next meeting of the Subcommittee would be held on Tuesday, 29 November 2011, at 10:45 am.
4. There being no other business, the meeting ended at 9:47 am.

Council Business Division 1
Legislative Council Secretariat
17 July 2012

**Subcommittee on
Companies Ordinance (Exemption of Companies and Prospectuses
from Compliance with Provisions) (Amendment) Notice 2011**

**Proceedings of the second meeting
on Wednesday, 23 November 2011, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001 - 000326	Chairman	Opening remarks and confirmation of minutes of meeting held on 11 November 2011	
000327 - 001557	The Administration The Securities and Futures Commission ("SFC")	Briefing by SFC on its information paper (LC No. CB(1)412/11-12(01)) as follows -- (a) At present, every prospectus offering shares or debentures to the public had to comply with various requirements under the Companies Ordinance ("CO"), including setting out a valuation report which contained specified particulars with respect to all interests in land or buildings of a company and its subsidiaries if the property interests had a value exceeding 10% of the group's assets or had a value of not less than HK\$3 million. These property valuation requirements did not differentiate whether the property interests were the listing applicant's core business.	

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		<p>(b) Stringent property valuation requirements had imposed additional costs on listing applicants and made prospectuses unnecessarily long. The printing of lengthy prospectuses were also "environmentally unfriendly".</p> <p>(c) Over the years, SFC and the Hong Kong Exchange and Clearing Limited ("HKEx") had received feedbacks from the market that the existing property valuation requirements for prospectuses were costly and burdensome, most of the valuation information provided in the prospectus was of little use to investors, and provision of unnecessary information would distract investors' attention from other more important information.</p> <p>(d) With the passage of time, the fixed monetary value of HK\$3 million had become less meaningful as a threshold for property valuation requirement, and there were views from the market suggesting to remove the threshold.</p> <p>(e) In comparison with other major financial centres in Australia, United States, United Kingdom, Singapore</p>	

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		<p>and the Mainland, Hong Kong was the only market that still imposed property valuation requirements on all property interests in prospectuses for listing applicants.</p> <p>(f) SFC and HKEx had jointly published a consultation paper in December 2010 to seek views from the public and stakeholders, including market practitioners and issuers, etc. on proposals to streamline the property valuation requirements under CO and the Listing Rules. Most respondents of the consultation supported the proposals and the results of consultation were published on 20 October 2011.</p> <p>(g) The proposed Amendment Notice was to amend section 6 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with provisions) Notice to impose different valuation requirements for property interests of a listing applicant depending on whether they were property activities or non-property activities.</p> <p>(h) The details of the proposed exemptions and investors protection were set out in paragraphs 5 to 10 of SFC's information paper. In</p>	

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		<p>summary: (i) a listing applicant would <u>not</u> be required to provide valuation report for property interests which fall under the category of property activities (i.e. Type B interest in the Amendment Notice) if the interests had a carrying amount of less than 1% of the company's total assets provided that the total carrying amounts of all the exempt Type B interest did not exceed 10% of the company's total assets. However, the listing applicant was still required to provide an "overview" of these exempt Type B interests in the prospectus showing the total number, the nature, approximate size range, the uses and a general description of the locations. (ii) For any exempt Type B interest that was beyond the 10% threshold and for all other Type B interests, full valuation report was required in the prospectus, except that a summary setting out the key information of the valuation report was allowed for any individual property interest with a value less than 5% of the total value of all non-exempt Type B interest. (iii) A listing applicant would <u>not</u> be required to provide valuation report for property interests which fall under the category of non-property</p>	

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		<p>activities (i.e. Type A interest in the Amendment Notice), except individual property interest with carrying amount of 15% or more of the company's total asset. (iv) For mining companies, if the prospectus contained a valuation report regarding the valuation, as a business or operating entity, of any such mining property interest, the requirement of setting out a valuation report in the prospectus would be exempted even for Type A interest with carrying amount of 15% or more of the company's total assets.</p> <p>(i) The Amendment Notice would be in investors' interest as it would enhance the quality of information provided to investors by differentiating the circumstances in which a valuation report must be obtained for a listing applicant's property activities interests and non-property activities interests and imposing different disclosure requirements in the prospectus.</p> <p>(j) In addition, it should be noted that issuers were still obliged under Third Schedule to CO to ensure that the prospectus contain sufficient particulars and information that would</p>	

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		<p>enable a reasonable person to form a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus, taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them. Notwithstanding the proposed exemptions in the Amendment Notice, if particulars and information on a listing applicant's property interest was necessary for investors to make an informed decision, a listing applicant must disclose such information in the prospectus.</p>	
001558 - 001934	Mr WONG Ting-kwong SFC	<p>Mr WONG Ting-kwong's enquiry about the basis for setting the proposed valuation thresholds of 1%, 10% and 15% of the company's total assets, and whether these thresholds were in line with standards adopted in other countries</p> <p>SFC's response that:</p> <p>(a) respondents to the public consultation supported replacing the monetary threshold of HK\$3 million with a fixed percentage threshold;</p>	

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		<p>(b) in order to safeguard investors' interests, SFC considered it prudent to retain 10% as the valuation requirement for property activities interests;</p> <p>(c) the 1% threshold for exempting property valuation requirement for property activities and the 15% threshold for non-property activities were proposed taking into account the majority views in the public consultation conducted in 2010; and</p> <p>(d) in general, any interest of less than 1% would be considered immaterial while that of 10% or more would be considered material, so SFC believed that the proposed thresholds were justified and logical</p>	
001935 - 004713	Chairman Administration SFC	<p>The Chairman's enquiries/concerns about --</p> <p>(a) when the threshold of 10% or HK\$3 million in relation to property interests of companies as specified in the Third Schedule to CO was set, the background and rationale for setting the threshold, and whether any review had been conducted since implementation of the threshold;</p>	The Administration to take actions under para. 2

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		<p>(b) the difference between an "overview" (概覽) and a "summary" (摘要) to be provided for property interests in the Amendment Notice;</p> <p>(c) whether the purpose of the Amendment Notice was to reduce compliance costs of companies or to enhance protection for the environment through saving papers in the production of prospectuses;</p> <p>(d) how the value of property interests of a company which was not engaged in property activities would be reflected in the prospectus, e.g. a manufacturing company owned an industrial building with value less than 15% of the company's total asset was exempted from the valuation requirement; however, later the company extended the business to property business and the industrial building became a valuable asset; hence the valuation information on the industrial building was an important investment information for investors;</p> <p>(e) whether the Administration and SFC should consider members' suggestion to require companies to provide valuation report on property</p>	

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		<p>interests through electronic means in order to save papers, or to set out the details in appendices to the prospectus so that investors could consider the information when necessary</p> <p>SFC's response as follows --</p> <p>(a) The 10% or HK\$3 million threshold was adopted over some 20 years. SFC would examine relevant documents and provide supplementary information in this respect.</p> <p>(b) Under the Third Schedule to CO, issuers were still required to ensure that the prospectus contain sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus. Notwithstanding the proposed exemptions, if particulars and information on a listing applicant's property interest was necessary for investors to make an informed decision, a listing applicant must disclose such information in the prospectus. Where necessary, SFC and HKEx would raise queries with the listing applicants.</p>	

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		<p>(c) For obvious reasons, it would be unlikely that listing applicants would withhold information on property interests with good development potentials from prospective investors.</p> <p>The Chairman's views that --</p> <p>(a) SFC should provide a comparison between the current and proposed property valuation and disclosure requirements on companies with different core businesses to illustrate how the proposed exemptions could reduce the compliance costs of companies, reduce the bulk of prospectuses yet protecting investors' interest in access to useful information about the companies; and</p> <p>(b) it would not be worth pursuing the proposed exemptions if the proposal would only result in minimal reduction in compliance costs for companies</p> <p>SFC's response that --</p> <p>(a) with the proposed exemptions, the prospectuses of companies not engaged in property activities would contain very few valuation reports in the</p>	

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		<p>future;</p> <p>(b) for prospectuses of companies engaged in property activities, it was estimated that no more than 10-12 property interests would require valuation;</p> <p>(c) the proposed exemptions would make a significant difference to issuers and listing applicants in terms of costs and time required in preparing valuation reports for prospectuses, especially overseas companies seeking listing in Hong Kong;</p> <p>(d) it was rather unlikely that listing applicants would hide away "gems", i.e. not disclosing valuation information on valuable assets to investors in the Initial Public Offering ("IPO"); and</p> <p>(e) there were measures, including requirements in CO and the Listing Rules, to ensure companies would provide adequate information on their properties in order to protect investors from understatement of company assets</p> <p>The Chairman's views that --</p> <p>(a) he was more inclined to have all property details of the company disclosed in the prospectus; and</p>	

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		<p>(b) he still felt uncomfortable with the 15% exemption threshold for interests not falling under the property activities, as there were cases where companies previously not engaged in property business gained huge profits by turning their property interests e.g. factory sites into residential developments</p> <p>SFC's response that --</p> <p>(a) the proposed exemptions would only apply to prospectuses issued for IPO; and</p> <p>(b) the provision of information on property interests of listed companies was subject to other regulatory mechanism, e.g. HKEx had published the guide for listed companies on disclosure of price-sensitive information</p>	
004714 - 005439	Chairman Mr WONG Ting-kwong SFC Administration	<p>The Chairman remained unconvinced and considered that the proposed 15% threshold too high and might deprive investors' access to important information on the property interests of companies.</p> <p>Mr WONG Ting-kwong's view/enquiries as follows --</p> <p>While he appreciated SFC's efforts</p>	

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		<p>in keeping Hong Kong's regulatory requirements in line with the latest global trends so as to maintain Hong Kong's competitiveness, he concurred with the Chairman that all possible efforts should be made to protect investors' interests.</p> <p>There was concern that the proposed exemptions would not save much of the listing cost for companies, but would undermine protection for investors by excluding important information for them to make informed investment decisions.</p> <p>How a company would comply with the new valuation and disclosure requirements without first conducting a valuation on all its assets, thus property valuation would be unavoidable under most circumstances for a company.</p> <p>It should be noted that failure to engage professionals to undertake property valuation might hold company directors liable to legal consequence.</p> <p>To reduce the bulk of the prospectuses, SFC could consider allowing companies to provide information on their property interests through electronic means. SFC's response that the aggregate carrying amount of a company's property interests was available in the company's audited balance</p>	

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		<p>sheet. Companies could base on such information without conducting a valuation exercise to find out whether its property interests were subject to the valuation requirement.</p> <p>The Chairman's enquiry as whether it was necessary for a company undergoing listing to carry out additional property valuation if the property values were already available in its latest audited balance sheet.</p> <p>SFC's clarification that under the Listing Rules, a prospectus must include an audited balance sheet which was not more than six months old. The carrying amount of property interests might reflect valuation amount if they were investment properties.</p>	
005440 - 010626	The Chairman SFC Mr WONG Ting-kwong	<p>The Chairman's views that --</p> <p>(a) the major benefit of the proposed exemption seemed to enhance environmental protection through requiring the production of less voluminous prospectuses rather than reducing the compliance burden and costs on companies; and</p> <p>(b) to protect the investors, he preferred providing "more information" to "less information" in prospectuses</p>	The Administration to take action under para. 2(c)

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		<p>for investors during the listing of a company</p> <p>SFC's response that --</p> <ul style="list-style-type: none">(a) to maintain Hong Kong's competitiveness as a leading global financial centre, it was important to protect investors' interest and also necessary for its property valuation and disclosure requirements in the listing regime to catch up with the latest global trends;(b) the requirement for all overseas companies to carry out valuation on each and every property and to disclose details of them in their prospectuses were burdensome and unnecessary, and these information would be of little use to investors;(c) lengthy and cumbersome prospectuses had imposed extra costs on companies and might deter international companies from seeking listing in Hong Kong;(d) a good example reflecting the "absurdity" of the listing requirement was the case of SmarTone where the company was required to provide valuation report on each and every transmission mast in locations all over the territory;	

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		<p>and</p> <p>(e) the profile of companies seeking listing in Hong Kong in recent years had revealed that most of the companies were Mainland enterprises and international companies which were engaged in non-property activities, such as natural resources and retailing business etc., instead of property development activities in the past</p> <p>Mr WONG Ting-kwong cautioned that while he supported SFC's move to relax the valuation requirements to cater for present-day needs, keep in line with requirements in overseas markets, as well as enhance protection for the environment, he did not support any attempt to reduce provision of property information on the company to investors running the risk to undermine protection on them</p>	
010627 - 011015	Mr CHIM Pui-chung Chairman Mr WONG Ting-kwong	<p>Mr CHIM Pui-chung's views that --</p> <p>(a) he doubted the motive of the Administration and SFC behind the Amendment Notice;</p> <p>(b) the Administration should clarify clearly the justifications for and benefits of the proposed exemptions in a</p>	

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		<p>supplementary paper; and</p> <p>(c) even with the proposed changes, it would still be necessary for most listed companies to go through property valuation for their property interests</p> <p>The Chairman's remarks that --</p> <p>(a) property assets of listed companies were a highly sensitive subject in Hong Kong; and</p> <p>(b) he was concerned that the proposed relaxation in property valuation requirements in the Listing Rules might lead to undesirable results</p> <p>Mr WONG Ting-kwong's view that in view of turmoil in the securities market in recent years, LegCo Members had to act with utmost care and prudence in vetting the proposed Amendment Notice</p>	
011016 - 011728	Chairman SFC Mr WONG Ting-kwong Mr CHIM Pui-chung	<p><u>Date of next meeting</u></p> <p>The Chairman's remark that --</p> <p>(a) a time slot on 29 November 2011 had been reserved for holding the next meeting; and</p> <p>(b) the Administration should endeavour to provide the required information before next meeting</p>	

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		<p>SFC's remarked that --</p> <p>(a) the Amendment Notice, if not approved by LegCo, might have a negative impact on the operation of SFC and HKEx as a number of international companies had indicated intention to submit listing applications pending passage of the proposed exemptions; and</p> <p>(b) SFC would consider inviting representatives from HKEx to attend the next meeting</p> <p>Mr WONG Ting-kwong's and Mr CHIM Pui-chung's remark that it was necessary for LegCo to study the Amendment Notice carefully in ensuring adequate protection for investors' interest</p>	