

立法會
Legislative Council

LC Paper No. CB(1)2376/11-12
(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 third meeting held on
Tuesday, 29 November 2011, at 10:45 am
in Conference Room 2B 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 I**

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

Attendance by Invitation : **Agenda item I**

*Representatives from the Securities and Futures
Commission*

Mr Brian HO
Executive Director
Corporate Finance Division

Mr Charles GRIEVE

Senior Director
Corporate Finance Division

Miss Flora MA
Senior Manager
Corporate Finance Division

Miss Grace MA
Senior Manager
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 Meeting with the Administration and the Securities and Futures Commission

(LC Paper No. CB(1)462/11-12(01) -- List of follow-up actions arising from discussion at the meeting on 23 November 2011

LC Paper No. CB(1)462/11-12(02) -- Securities and Futures Commission's response to the issues raised by members at the meeting on 23 November 2011

LC Paper No. CB(1)412/11-12(01) -- Paper on the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011 provided by the Securities and Futures

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

Relevant papers

(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)

Members deliberated (index of proceedings at the **Appendix**).

2. To address members' concerns, the Securities and Futures Commission ("SFC") was requested to consider the following suggestions from members --

- (a) To put in place additional threshold(s) on valuation requirements for companies with non-property activities. A possible option is to require a company to provide a summary report instead of an overview (as proposed in the Amendment Notice) on each individual non-property activities interests if all such interests adding together have a value exceeding 15% of the total asset of the company. In respect of companies with property activities interests, for a company which is exempted from the full valuation report requirement in the prospectus, to lower the threshold on the requirement to provide a summary on the full text of the valuation report so that more companies will be required to provide a summary instead of just an overview on such property interests;
- (b) While under the proposals in the Amendment Notice companies are required to provide for public inspection the full text of the

valuation report with respect to each summary property activities interests which is not covered by a valuation report set out in the prospectus, members noted that investors/interested parties have to go to the offices of the companies to inspect such reports. In order to provide convenience to investors, members suggested that SFC should consider requiring companies to make available the full valuation reports through electronic means, such as uploading the documents onto the company's website; and

- (c) To consider measures to enhance wider use of electronic means for dissemination of information on companies to achieve early benefits in lowering the compliance cost on market participants, facilitating investors and enhancing sustainability in the securities market.

II Any other business

- 3. Members agreed to hold the next meeting of the Subcommittee on Thursday, 1 December 2011 at 4:30 pm.
- 4. There being no other business, the meeting ended at 11:46 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 third meeting
on Tuesday, 29 November 2011, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001 - 001212	Chairman	Opening remarks	
001213 - 002144	The Securities and Futures Commission ("SFC")	<p>Briefing by SFC on its paper (LC No. CB(1)462/11-12(02) as follows --</p> <p>(a) The Companies Law Revision Committee ("CLRC") recommended in June 1971 that since land in Hong Kong was highly valuable, valuation of land should be made statutory. CLRC then recommended requiring companies to conduct a valuation in every case where the value of the land and buildings owned by companies exceeded 10% of its assets or HK\$1 million, whichever was the less. CLRC's report did not mention the rationale for setting the threshold. However, the threshold of 10% or HK\$3 million was introduced in the Companies (Amendment) Ordinance 1972 which was later enacted in 1973. There was no public record on the change of</p>	

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		<p>the threshold from HK\$1 million to HK\$3 million. The property valuation requirement (with the threshold of 10% or HK\$3 million) under paragraph 34 of the Third Schedule to the Companies Ordinance had remained the same since 1973.</p> <p>(b) In recent years, for most listing applicants from the Mainland and other countries, land was no longer a major item in the balance sheets of these companies.</p> <p>(c) At members' request, SFC had drawn up a table in the paper showing details of 18 companies listed in Hong Kong in the past three years.</p> <p>(d) The cost of obtaining valuations was a significant burden and a major disincentive to international companies seeking listing in Hong Kong. For instance, Company 6 was engaged in banking business in the Mainland. The company had 46 067 property items in nine jurisdictions which accounted for only 1.3% of the company's total assets. It would be very costly for the company to conduct valuation on over 40 000 property items.</p> <p>(e) At present, a listing applicant normally produce 30 000 copies</p>	

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		<p>of a prospectus. For every 100 pages of prospectus, three million pages would need to be printed.</p> <p>(f) In comparison with other jurisdictions, Hong Kong was the only place that required valuation for all property interests of listing applicants. The average length of prospectuses in Hong Kong was about 600 pages, which was 100 to 200 pages more than those in other leading financial markets.</p> <p>(g) As shown in the examples of two international companies under paragraph 9 of the paper, due to Hong Kong's valuation requirements, these companies had to spend huge sum of money on valuation and printing of prospectuses.</p> <p>(h) Valuation reports on large numbers of properties had made prospectuses unnecessarily bulky. Excessive information could only result in key information being obscured by less relevant information. Information in prospectus should confine to those relevant to investors' decisions.</p>	
002145 - 002603	Mr CHIM Pui-chung SFC Chairman Administration	Mr CHIM Pui-chung's views that -- (a) he would support proposed exemptions in the Amendment	The Administration to take action under para. 2

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		<p>Notice if they could benefit Hong Kong and listing applicants in a positive way;</p> <p>(b) if investors were provided with all required information, listing applicants should be allowed to provide such information through electronic means, such as publishing the information at the companies' websites; and</p> <p>(c) whether the Amendment Notice would change the current listing regime from "disclosure-based" to "scrutiny-based" and "approval-based", and whether it would help expedite implementation of a scripless securities market in the long run</p> <p>SFC's response that --</p> <p>(a) SFC would consider Mr CHIM's views in reviewing the existing policy regarding "disclosure requirements" and the requirement on provision of hard copies of prospectus; and</p> <p>(b) pursuant to amendments in rules governing the listing of securities on the Stock Exchange of Hong Kong which took effect in February 2011 to allow wider use of electronic means in the dissemination of information, the number of hard copies of prospectus had already been</p>	

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		reduced from a far larger quantity to the present 30 000 copies. It was necessary to maintain prospectuses in hard copies for investors who had no access to computers	
002604 - 003415	Chairman SFC	<p>The Chairman's views on the disclosure requirements of the 18 companies in the Administration's paper that --</p> <p>(a) while he considered Company 6 a valid case which justified the proposed exemptions, he had reservation applying similar treatment to other companies;</p> <p>(b) in particular, he was gravely concerned that for Companies 10, 11 and 12, which had property interests constituting a significant portion of the companies' total assets (i.e. 33.4% to 36.9%), neither full valuation reports nor a summary of these reports would be required under the proposed exemptions; and</p> <p>(c) the valuation requirement was loose for companies with property activities, i.e. Companies 13 to 17, which were only required to provide just one or a very small number of full valuation reports for their individual property interests</p>	The Administration to take action under para. 2

Time marker	Speaker	Subject(s)	Action required
		<p>SFC's response that --</p> <p>(a) Company 1 was PRADA, and the 413 individual property interests were mostly leased retail premises and the valuation might be zero;</p> <p>(b) Company 11 was a chain restaurant group. The property interests which represented 34.4% of the company's total assets were cost incurred by designs and renovation of leased restaurant premises;</p> <p>(c) Company 8 was RUSAL (俄鋁) which had 19 907 property items, most of which were mining plants and staff dormitories. It was not justified for the prospectus to focus on these ancillary or production-related property items; and</p> <p>(d) for Companies 13 to 17 engaging in property activities, most of the property information useful to investors would be included in the summaries of full valuation reports. Investors were able to inspect the full valuation reports at the company offices.</p>	
003416 - 004333	The Chairman SFC	<p>The Chairman's views that --</p> <p>(a) while he agreed that the proposed exemption was necessary for extreme cases,</p>	The Administration to take action under para. 2

Time marker	Speaker	Subject(s)	Action required
		<p>such as Companies 6, 8 and 11, it might not be appropriate to apply the exemption to companies not engaged in property activities but with property items adding together represented a significant portion of the company asset, such as Companies 10 and 12;</p> <p>(b) in effect, the proposed exemptions could not save much of the work and costs of most listing applicants; and</p> <p>(c) there should be a safe "dividing line" and thresholds that could provide best protection to investors</p> <p>SFC's response that --</p> <p>(a) SFC would consider the Chairman's views;</p> <p>(b) Company 10 was a cement manufacturing company and the total property interests of 33.4% of the company's total assets were actually "depreciated replacement costs";</p> <p>(c) according to International Financial Reporting Standards, only property items which were "investment properties" were subject to valuation;</p> <p>(d) in Singapore and the United Kingdom, only "principal" and "material" property items would require valuation;</p>	

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		<p>(e) feedbacks from the market revealed that "unreasonable" valuation requirements could deter international companies from applying for listing in Hong Kong;</p> <p>(f) provision of "summaries" and "overviews" in place of full valuation reports in the prospectus could save paper, printing and valuation expenses; and</p> <p>(g) while SFC was committed to enhancing protection for investors' interests, it considered that over-stringent and unreasonable property valuation requirements would not benefit the investment market and investors</p>	
004334 - 005327	<p>The Chairman SFC The Administration Clerk</p>	<p>The Chairman's views that --</p> <p>(a) to address members' concerns, the Administration should consider reviewing the proposed thresholds and exemptions;</p> <p>(b) it would be more prudent for SFC to adopt stricter and more secure thresholds at the present stage, while considered relaxing the requirement further after review;</p> <p>(c) as demonstrated in the case of Shiu Wing Steel Limited in</p>	<p>The Administration to take action under para. 2</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Tseung Kwok O under which the steel plant had been turned into a property development, SFC and the Administration should be careful with the development potential of production-related properties; and</p> <p>(d) in certain circumstances, it would be necessary to require companies to conduct full property valuation on its major production plants/premises</p> <p>SFC's response that --</p> <p>(a) in the case of Company 8 RUSAL (俄鋁), most of the property items listed in the prospectus were mining plants scattered in remote countryside in Russia and other countries. These plants had little development potential; and</p> <p>(b) since listing applicants would be held legally responsible for any "untrue statements" and "material omissions" in the prospectus, the chance for the companies to cover up property interests with good development prospect would be low</p> <p>The Administration responded that it would discuss with SFC on members' concerns before reverting to the Subcommittee</p>	
005328 - 005718	Mr Alan LEONG SFC	Mr Alan LEONG's enquiry about areas which Administration and SFC	The Administration to

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	Chairman	<p>would review in the light of concerns expressed by members</p> <p>SFC's response that --</p> <p>(a) SFC would re-examine the 15% threshold for non-property activities interests;</p> <p>(b) as the proposed exemptions had gone through extensive consultation with relevant stakeholders, further change without involving the consulted parties would not be appropriate; and</p> <p>(c) SFC appealed to the Subcommittee to approve the Amendment Notice</p> <p>The Chairman's response that he did not support approving the Amendment Notice first as subsequent changes could lead to great confusion in the market</p>	take action under para. 2
005719 - 010025	Mr CHIM Pui-chung The Chairman	<p>Mr CHIM Pui-chung's views that --</p> <p>(a) he would support all positive moves that could facilitate international companies seeking listing in Hong Kong; and</p> <p>(b) as long as investors were able to secure the required information of the listing companies through electronic and other means, Hong Kong should move towards a scripless market</p>	

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		<p>The Chairman's concern that --</p> <ul style="list-style-type: none">(a) if company information, including those on valuation of company properties could not be provided to investors through electronic means, investors would need to visit company offices to inspect such information which could be inconvenient to investors;(b) with the proposed exemptions, investors would be deprived of useful information on the company as such information would no longer be required to be provided in the prospectus; and(c) the Administration and SFC should consider requiring listing companies to display all valuation reports and summaries on their websites or through other electronic means <p>SFC's response that --</p> <ul style="list-style-type: none">(a) even with the proposed exemptions, investors would have access to all material and important information on a company; and(b) SFC in general supported that relevant information on a company, which was not included in the prospectus,	

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		should be uploaded as "document for display" on the company website. SFC would discuss with the Exchanges to secure its support	
010026 - 010140	Chairman ALA 10	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
17 July 2012