

立法會
Legislative Council

LC Paper No. CB(1)2377/11-12
(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 fourth meeting held on
Thursday, 1 December 2011, at 4:30 pm
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

Member absent : Hon Alan LEONG Kah-kit, SC

Public officers 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)506/11-12(01) -- List of follow-up actions arising from discussion at the meeting on 29 November 2011

LC Paper No. CB(1)506/11-12(02) -- Securities and Futures Commission's response to the issues raised by members at the meeting on 29 November 2011

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 Commission
- 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

(L.N. 143 of 2011

- Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011
- Legislative Council Brief
- LC Paper No. LS2/11-12 -- Legal Service Division Report))

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

2. After discussion, members agreed that the Chairman would move a motion on behalf of the Subcommittee to repeal the Amendment Notice at the Council Meeting of 14 December 2011. Noting that the deadline for giving notice to repeal or amend the Amendment Notice was 7 December 2011, members urged the Administration to reconsider its position and agreed that should the Administration indicated on or before 6 December 2011 that it would move a motion to repeal the Amendment Notice, the Subcommittee Chairman would not proceed repealing the Amendment Notice.

II Any other business

3. There being no other business, the meeting ended at 5:48 pm.

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 fourth meeting
on Thursday, 1 December 2011, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001 - 001002	Chairman	<u>Opening remarks</u>	
001003 - 001740	The Securities and Futures Commission ("SFC") Chairman	<p><u>Discussion on SFC's response to the issues raised by members at the meeting on 29 November 2011 (LC Paper No. CB(1)506/11-12(02))</u></p> <p>SFC's response that it had duly considered the suggestions of the Subcommittee and further analyzed the information on the companies shown in the paper discussed at the meeting held on 29 November, and had come to the conclusion that the measures proposed in the Amendment Notice were in order and required no amendment</p> <p>The Chairman's response that --</p> <p>(a) he considered that a simple "overview" on the property interests to be provided in the prospectus was insufficient for listing applicants such as Companies 10, 11 and 12 shown in SFC's paper, as each</p>	

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		<p>company's property interests adding up was above 30% of the company's total assets; and</p> <p>(b) due to historical reasons, property interests of a listed company in Hong Kong was regarded significant asset of the company</p> <p>SFC's response that --</p> <p>(a) as shown in the table (page 2 of the paper), valuation surplus of the property interests of Companies 10, 11 and 12 only accounted for a very small percentage of their total assets, and such information would be of minimal value to investors;</p> <p>(b) unlike Hong Kong, listing applicants in other countries including the United Kingdom ("UK") and the United States, were not required to conduct valuation for properties that were part of their non-property activities; and</p> <p>(c) it would be difficult for SFC to take forward members' suggestions</p>	
001741 - 002957	Mr WONG Ting-Kwong SFC	Mr WONG Ting-Kwong's enquiry about whether property interests of non-listed companies were	

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	Chairman	<p>required to be valued in the financial statement</p> <p>SFC responded that investment properties of listed and non-listed companies might need to be valued</p> <p>Mr WONG Ting-Kwong's views that --</p> <ul style="list-style-type: none">(a) under the revised Inland Revenue Ordinance, non-listed companies were required to carry out valuation for their properties;(b) most investors in Hong Kong would regard properties owned by listed companies important assets of the companies, as the value of properties could increase substantially over years as demonstrated in the case of land properties owned by the Kowloon Motor Bus Co. (1933) Ltd.;(c) it would be in the interest of investors for the prospectus to contain information on the company's properties as detailed as possible; and(d) property valuation would not create extra burden to companies seeking listing in Hong Kong <p>The Chairman's views that --</p>	

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		<p>(a) in Hong Kong, information on properties held by companies, regardless whether they were for investment purpose or otherwise, were of great importance to investors; hence he had reservation on SFC's proposal to relax the valuation requirements for companies such as Companies 10, 11 and 12; and</p> <p>(b) as the profit-earning capacity of the non-property activities could not be under-estimated, details of such activities interests should be provided in the prospectus for reference of investors</p> <p>Clarification by SFC and the Administration that --</p> <p>(a) international accounting standards did not require valuation for non-property activities interests; and</p> <p>(b) even if a valuation for non-property activities interests was obtained to comply with the valuation requirement, book value rather than valued amount would be used in the company's balance sheet and financial statements</p>	
002958 -	Mr CHIM Pui-chung	Mr CHIM Pui-chung's query about	

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004201	Chairman SFC Administration	<p>the real intention of the Amendment Notice, and his view that SFC should make better use of its discretionary power in vetting listing applications and granting waiver to listing applicants from strict compliance with the property valuation requirements</p> <p>The Chairman's comments that if SFC exercised its discretionary power in granting exemption to listing applicants in justified cases, it might not be necessary to change the existing legislation</p> <p>The Administration's response that --</p> <p>(a) Hong Kong's property valuation requirements lagged behind those of major financial markets and the international accounting standards; and</p> <p>(b) the existing valuation requirement under the Companies Ordinance ("CO") had not taken into account differences between property activities interests and non-property activities interests; and</p> <p>(c) Hong Kong's current property valuation requirements were disincentives for international companies seeking listing in Hong Kong</p> <p>SFC's supplement that --</p>	

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		<p>(a) while SFC had discretionary power under section 38A(1) of CO to exempt listing applicants from complying with any or all property valuation requirements, international listing applicants would face "uncertainties" since their application for waiver might be rejected; and</p> <p>(b) it should be noted that Companies 10, 11 and 12 did not apply for a waiver from strict compliance with the property valuation requirements</p>	
<p>004202 - 005120</p>	<p>ALA 10 SFC Mr CHIM Pui-chung Chairman</p>	<p>ALA10's enquiry about --</p> <p>(a) the meanings of "material properties" and "principal properties" which required valuation in the UK and Singapore regimes; and</p> <p>(b) whether there was prescribed percentage thresholds in the valuation requirements in the two regimes</p> <p>SFC's response that --</p> <p>(a) there was no definition on the two concepts in the UK and Singapore regimes and it was believed that the two concepts were similar; and</p> <p>(b) under the Amendment Notice, by adopting 1% of the</p>	

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		<p>company's total assets as the threshold for conducting property valuation for property activities interests, Hong Kong's requirements would still be stricter than other jurisdictions</p> <p>Mr CHIM Pui-chung's views that --</p> <p>(a) he would support any proposals that would be beneficial to the financial market in Hong Kong and make it on par with other major international financial centers;</p> <p>(b) SFC should consider improving the way it exercised the discretionary power in granting exemption to the valuation requirement instead of amending the existing rules; and</p> <p>(c) SFC should develop internal guidelines to assist its staff in the proper exercise of the discretionary power and enhance transparency in the use of such power</p> <p>The Chairman's views that --</p> <p>(a) he was still concerned about the relaxed valuation requirements for Companies 10, 11 and 12, and was not convinced by the explanations</p>	

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		<p>provided by SFC and the Administration;</p> <p>(b) it was suggested that SFC should relax the valuation requirements in a progressive manner and should implement stricter requirements for Companies 10, 11 and 12; and</p> <p>(c) the use of SFC's discretionary power would be a better option than amending the valuation requirements</p>	
005121 - 005804	Chairman SFC	<p>The Chairman's enquiry on whether SFC had difficulties in coping with rising number of listing applications and exercising its discretionary power in granting wavier to applicants</p> <p>SFC's response that --</p> <p>(a) the exercise of discretionary power was limited to certain circumstances, for example, it would be difficult to exempt companies engaged in property business from property valuation requirements;</p> <p>(b) it was necessary to give listing applicants a sense of "certainty", and granting of exemptions on an ad hoc basis was not a good option;</p> <p>(c) it should be noted that properties of most international companies seeking listing in Hong Kong</p>	

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		<p>were located in many jurisdictions;</p> <p>(d) the current valuation requirements were over stringent and were disincentives in turning away listings from overseas companies; and</p> <p>(e) Hong Kong being a major international financial centre, should follow the global trend in updating its listing requirements</p> <p>The Chairman's comments that --</p> <p>(a) for the sake of ensuring protection for investors' interests, it was necessary to provide investors with a "full picture" of the properties of a company, regardless of their number, purposes, sizes and value; and</p> <p>(b) when a company applied for listing, its prospectus was the only means for investors to have the full details of its property interests</p>	
005805 - 010523	Mr WONG Ting-Kwong SFC	<p>Mr WONG Ting-Kwong's views that --</p> <p>(a) the Amendment Notice might be used by SFC as a means to shirk its responsibility for making wrong decisions in</p>	

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		<p>vetting listing applications; and</p> <p>(b) the existing listing regime which provided SFC with discretionary power to grant exemption for listing applicants from complying with any or all the valuation requirements could provide more flexibility than amending the legal requirements</p> <p>SFC's response that --</p> <p>(a) SFC would continue to use its discretionary power after the Amendment Notice was in place;</p> <p>(b) SFC could grant exemption to listing applicants under section 38A of CO, only if it was satisfied that the exemption would not prejudice the interest of the investing public and compliance with the valuation requirements would be "irrelevant or unduly burdensome" or was "otherwise unnecessary or inappropriate"; and</p> <p>(c) strict listing requirements might turn potential listing applicants away from Hong Kong</p>	
010524 - 012023	Mr CHIM Pui-chung Administration SFC Chairman	Mr CHIM Pui-chung's views that he did not see any genuine benefits to implement the Amendment Notice, except that SFC could use	

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	Mr WONG Ting-Kwong	<p>the Amendment Notice as a means to protect itself from criticism about mishandling of listing applications</p> <p>The Administration's and SFC's response that --</p> <p>(a) the proposed amendments in the Amendment Notice aimed at enhancing certainty of the regime, and would bring Hong Kong's listing requirements closer to the international standards, and hence would help maintain Hong Kong's status as a leading listing venue;</p> <p>(b) the Amendment Notice was in investors' interest, as it would enhance the quality of information provided to investors by differentiating the circumstances in which full valuation report, summary or overview for property activities interests and non-property activities interests of a company were to be provided in prospectus;</p> <p>(c) as explained in SFC's paper, the setting of 10% of the company's total assets as an additional threshold for property activities interests served as a further safeguard for small property items each accounting for less than 1% of</p>	

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		<p>the total assets;</p> <p>(d) the Amendment Notice had struck a correct balance between protecting investors' interest on provision of material information on a company and reducing cost burden on companies as well as maintaining Hong Kong's competitiveness as an international listing venue; and</p> <p>(e) the Administration and SFC would continue their efforts to enhance transparency of the listing requirements and Hong Kong's competitiveness as a leading international financial centre</p> <p>The Chairman's conclusion on the discussion --</p> <p>(a) members present at the meeting were not supportive to the Amendment Notice; and</p> <p>(b) there were three options: (I) the Administration to move a motion to repeal the Amendment Notice; (ii) he as the Chairman, to move a motion to repeal the Amendment Notice; or (iii) if the Subcommittee did not reach a consensus for (ii), individual members could consider moving a motion to repeal the Amendment Notice</p>	

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		<p>Mr CHIM Pui-chung's views that --</p> <ul style="list-style-type: none"> (a) he agreed with the Chairman that the Amendment Notice should be repealed; and (b) SFC should take on board members' views to improve the exercising of the discretionary power under section 38A(1) of CO and take up accountability for its decisions <p>Mr WONG Ting-Kwong's views that he supported the Chairman's suggestion to repeal the Amendment Notice</p> <p>The Administration reiterated that the Amendment Notice was important for maintaining Hong Kong's competitiveness as a global financial centre, and appealed to members for their support for the Amendment Notice</p> <p>The Chairman's concluding remark that on behalf of the Subcommittee, he would move a motion at the Council Meeting to repeal the Amendment Notice</p> <p>The Chairman urged the Administration to reconsider its position; and said that should it indicate on or before 6 December that it would move a motion to repeal the Amendment Notice, the Subcommittee would not proceed</p>	

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		repealing the motion	

Council Business Division 1
Legislative Council Secretariat
17 July 2012