

立法會
Legislative Council

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

**Minutes of the fifth meeting held on
Tuesday, 6 December 2011, at 5:30 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 Alan LEONG Kah-kit, SC

Member absent : Hon CHIM Pui-chung

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 Ashley ALDER
Chief Executive Officer

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

*Representatives from Hong Kong Exchanges and
Clearing Limited*

Mr Mark DICKENS
Head of Listing

Representatives from the Listing Committee

Ms Teresa KO
Chairman

Representatives from Kirkland & Ellis

Mr Dominic TSUN
Partner

Representatives from Slaughter & May

Ms Benita YU
Partner

Mr Laurence RUDGE
Partner

Representatives from Clifford Chance

Ms Amy LO Sau-han
Partner

Ms Virginia LEE Yuen-man
Partner

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

Ms Christina SHIU
Legislative Assistant (1)4

Action

I Meeting with the Administration and the Securities and Futures Commission

(LC Paper No. CB(1)547/11-12(01) -- Letter dated
6 December 2011 from Asia
Securities Industry &
Financial Markets
Association

LC Paper No. CB(1)542/11-12(01) -- Letter dated
5 December 2011 from the
Securities and Futures
Commission

LC Paper No. CB(1)528/11-12(01) -- Letter dated
2 December 2011 from The
Stock Exchange of Hong
Kong Limited

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

LC Paper No. LS2/11-12

-- Legislative Council Brief
-- Legal Service Division Report

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)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)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)

The Subcommittee deliberated (Index of proceedings at the **Appendix**).

2 Having considered the views of market practitioners and further explanation of SFC and the Administration, Mr WONG Ting-kwong moved the following motion:

"That this Subcommittee reverses the decision made at the meeting on 1 December 2011; and that the Chairman of the Subcommittee will not move a motion to repeal the Amendment Notice on behalf of the Subcommittee at the Council meeting on 14 December 2011."

The motion was put to vote. Two members voted for and one member voted against the motion. The motion was passed.

3. The Chairman indicated that he would move a motion in his own name to repeal the Amendment Notice at the Council meeting on 14 December 2011.

II Any other business

4. There being no other business, the meeting ended at 6:57 pm.

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

**Proceedings of the fifth meeting
on Tuesday, 6 December 2011, at 5:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000001 - 000807	Chairman	Opening remarks	
000808 - 001210	Administration Chairman	<p>The Chairman said that the Administration and the Securities and Futures Commission ("SFC") had written on 5 December 2011 requesting the Subcommittee to hold a further meeting. While he had read the letter and found that there was no new information provided therein, he had acceded to two members' request to hold this urgent meeting to meet with market practitioners. He asked why the Administration and SFC had not proposed the Subcommittee to meet with the market practitioners in previous meetings.</p> <p>The Administration responded that while the Administration and SFC had briefed members on the proposals under the Amendment Notice in previous meetings, it was considered desirable for members to meet with market practitioners to hear their views on the proposals, in particular how the proposals would enhance Hong Kong's competitiveness as an international listing venue, and for market practitioners to explain the problems and difficulties faced by the industry.</p>	
001211 - 001739	SFC	<p>SFC's views that --</p> <p>(a) while SFC had the power to waive the legal requirements on a case-by-case basis, the waiver granted by SFC would never be the same as an actual change in the law; and</p> <p>(b) for listing applicants, they would face uncertainty as the outcome was unclear when they applied for waiver from SFC</p>	

Time marker	Speaker	Subject(s)	Action required
001740 - 001914	Hong Kong Exchanges and Clearing Limited ("HKEx")	<p>HKEx's views that --</p> <ul style="list-style-type: none"> (a) the proposals in the Amendment Notice were "practitioner-driven" and were put forward to address current concern about stringent valuation requirements for property interests of listing applicants; (b) the proposals had been worked out by SFC and HKEx in consultation with the industry and the market; and (c) the proposals were important for Hong Kong to maintain its competitiveness as a major international financial centre 	
001915 - 002314	The Listing Committee	<p>The Listing Committee's views that --</p> <ul style="list-style-type: none"> (a) the existing property valuation requirement had been in existence since 1972, and there was a strong view from the market that the property valuation requirements in Hong Kong, which were much more stringent than those in New York, London, Australia and Singapore, had to move in line with those in other major markets so that Hong Kong's competitiveness as an attractive listing venue for international companies would be maintained; (b) international companies, such as Prada and Samsonite, seeking listing in Hong Kong might have a lot of non-property activities interests spreading over many jurisdictions; if no waiver was granted to these companies, bulky prospectuses containing numerous pages of irrelevant property information would need to be produced, involving substantial cost and time for the listing applicants; (c) uncertainty of the waiver process had pushed away potential listing applicants from the Hong Kong market; and (d) the Amendment Notice would not reduce protection for investors and shareholders, 	

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		<p>as disclosure of numerous pages of valuation information on non-property activities, which were irrelevant and had no genuine value, would only cause confusion to investors and shareholders</p>	
002315 - 002642	Kirkland & Ellis	<p>Kirkland & Ellis' views that --</p> <ul style="list-style-type: none"> (a) most international listing applicants had found the property valuation requirements in Hong Kong strange and difficult to comply with, and these requirements did not exist in other jurisdictions; (b) there were feedbacks from international companies seeking listing in Hong Kong that the strict valuation requirements were disincentive in attracting listings in Hong Kong and had sent potential listing applicants away; (c) the application for waivers from SFC was a cumbersome and costly process and with uncertain outcome; and (d) proposals in the Amendment Notice would enhance Hong Kong's attractiveness as an international financial centre, and would be a fairer and better arrangement for investors 	
002643 - 002954	Slaughter & May	<p>Slaughter & May's views that --</p> <ul style="list-style-type: none"> (a) based on its experience working on initial public offers ("IPOs") for large companies, such as Prudential and Alibaba, cumbersome property valuation requirements were always a major concern of the listing applicants as substantial cost, time and efforts from the companies would be required in meeting the requirements; (b) valuation information on non-property activities interests of companies would be of little value for investors; 	

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		<p>(c) it was necessary to invest a great deal of time and resources for companies to seek waiver for complying with the property valuation requirements;</p> <p>(d) in the listing of Prada (which had been granted with waiver from complying with the property valuation requirements), there had been no query from investors about insufficient provision of property information on the company; and</p> <p>(e) the proposals in the Amendment Notice would ensure the provision of salient and useful information about a company in its prospectus and the accountants' report, and would save millions of valuation fees for companies and pages of useless disclosures in the prospectus</p>	
002955 - 003154	Clifford Chance	<p>Clifford Chance's views that --</p> <p>(a) previous communication with some listing applicants showed that the valuation requirement of Hong Kong was grossly outdated, and Hong Kong's property valuation regime was out of pace with other financial centres such as London, New York and Australia;</p> <p>(b) as reflected in the case of the listing of Glencore (a company engaged in mining business with a large number of non-property activities interests in numerous jurisdictions), the value of the land on which the mining plants were located was of little value to investors; and</p> <p>(c) the Amendment Notice would not deny investors' access to property information about a company</p>	
003155 - 004807	Mr WONG Ting-kwong Chairman	<p>Mr WONG Ting-kwong's view that --</p> <p>(a) while the explanation by the Administration and SFC in previous meetings had mainly focused on the advantages of the Amendment Notice in</p>	

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		<p>saving papers in the production of prospectuses and thus enhancing sustainability of the financial market, the present meeting was very useful for Subcommittee members to understand the views and concerns of market practitioners and listing applicants about the existing property valuation requirements in Hong Kong; and the IPO cases of Prada and Samsonite had enabled members to better understand the purposes of the Amendment Notice; and</p> <p>(b) whether SFC would continue to retain its discretionary power in granting waivers if the Amendment Notice was passed</p> <p>SFC's response that the waiver power would continue to operate but it was anticipated that the applications for waiver would decline substantially</p> <p>The Chairman commented that the Administration and SFC had presented the pros and cons of the proposals under the Amendment Notice in previous meetings. Referring to Administration's paper showing property details of 18 companies listed in Hong Kong (CB(1)462/11-12(02)) which had been discussed at a previous meeting, he agreed that there would be genuine grounds for granting exemptions to Company 6 from complying with the property valuation requirements. However, for Companies 10, 11 and 12, although they were engaged in non-property activities, the total property interests held by the companies had exceeded 30% of their aggregate assets. It would be insufficient to only require these companies to provide an overview on the property interests in the prospectus. As such, the Subcommittee had urged SFC and the Administration to consider its views and come back with revised proposals so that only the justified cases could benefit from the new class exemptions. He was disappointed that SFC and the Administration had not considered members' views favourably. As the Subcommittee considered that SFC</p>	

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		<p>could continue to rely on the granting of waivers to exempt international listing applicants from full compliance with the property valuation requirements, members had decided at the last meeting to repeal the Amendment Notice.</p> <p>SFC responded that the Amendment Notice was able to differentiate valuation requirements between property companies and non-property companies. The Amendment Notice proposed to set the threshold for non-property companies at 15%. Yet, in the case of a property company, any property interest exceeding 1% of total assets of a company would have to go through property valuation</p> <p>The Chairman's view that SFC should review the proposals under the Amendment Notice to draw up more appropriate thresholds on property valuation requirements for companies. He opined that SFC and the Administration could consider relaxing the thresholds in the light of actual circumstances in future</p>	
004808 - 005321	Mr Alan LEONG SFC Chairman	<p>Mr Alan LEONG's views that the crux of the discussion was where the threshold should be set. For Companies 10, 11 and 12, he enquired whether it was possible for SFC and the Administration to consider alternative which could meet the market demand yet allay members' worries, for example, requiring a more detailed summary of the full valuation report</p> <p>SFC responded that it had duly considered members' views and reconsider the thresholds for property valuation requirements, and had come to the conclusion that it would be unrealistic to revise the existing threshold. It should be noted that there was no valuation requirement for companies in respect of their non-property activities interests in other jurisdictions. Revised threshold for non-properties activities interests exceeding 15% of the total assets would make Hong Kong at odd with other jurisdictions and discourage international companies to seek</p>	

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		<p>listing in Hong Kong. After implementation of the Amendment Notice, Hong Kong's valuation requirements would continue to be the strictest among markets in the world.</p> <p>The Chairman's view that unlike other countries, information on property interests held by companies was important for Hong Kong investors. He considered that the exclusion of Companies 10, 11 and 12 from the class exemption would not affect Hong Kong's competitiveness as an international listing venue since majority of the companies would still be exempted from the stringent property valuation requirements.</p>	
005322 - 005721	Slaughter & May Kirkland & Ellis	<p>Slaughter & May's views that immaterial and ancillary properties such as those valued below 1% of a company's total assets would not deserve the effort and time for valuation</p> <p>Kirkland & Ellis had observed that most international companies seeking listing in Hong Kong did not own properties in Hong Kong and were not engaged in property-related business. Moreover, properties owned by these companies were mostly leased properties which should not be concerns of Hong Kong's investors.</p>	
005722 - 010737	Mr WONG Ting-kwong Chairman SFC	<p>Mr WONG Ting-kwong's views that he supported the Amendment Notice in principle. He shared the Chairman's concern and asked whether SFC would conduct review on the thresholds after implementation of the Amendment Notice for sometime.</p> <p>The Chairman's views that in order to address members' concerns, he would prefer putting in place a more stringent threshold for Companies 10, 11 and 12. He agreed that further relaxation on the threshold could be considered after future reviews.</p> <p>SFC responded that there was no scientific method for SFC to come to precise percentages as the thresholds. SFC would conduct regular reviews on the thresholds, including the need to enhance investor protection on the provision of relevant information to facilitate their</p>	

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		investment decisions. It was necessary for Hong Kong to keep on par with other jurisdictions. The proposals in the Amendment Notice were the result of extensive consultation with market practitioners and the public.	
010738 - 011406	Administration Chairman Mr WONG Ting-kwong	<p>The Administration's response that it had discussed with SFC the Chairman's suggestion, in particular regarding the appropriate thresholds to be set. It was necessary for the prospectus to focus on key, useful and relevant information that could truly benefit the investors. It would be difficult to incorporate the Chairman's suggestion in the current Amendment Notice.</p> <p>The Chairman's comment that he was not satisfied with the response from the Administration and SFC. He re-iterated that his proposal was reasonable and justified, and most listing applicants could still benefit from the exemption.</p> <p>Mr WONG Ting-kwong's comment that it was necessary to distinguish property interests serving production purposes from those which were for profit making. He urged SFC to carry out timely reviews after implementation of the Amendment Notice.</p>	
011407 - 011636	The Listing Committee	The Listing Committee's views that it fully appreciated the Chairman's concerns. It considered that the proposed thresholds had made a clear distinction between property and non-property companies. There were safeguards to protect the interest of investors as listing applicants had obligation under the Companies Ordinance and the Listing Rules to ensure their prospectuses contained sufficient particulars and information even with implementation of the proposed exemptions in the Amendment Notice.	
011637 - 011825	Clifford Chance	Clifford Chance's views that although the value of properties of Companies 10, 11 and 12, exceeding 30% of total assets might look substantial, most investors would look at the core business of the companies in making their investment decision. There would be other	

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		forms of control measures on IPOs to ensure sufficient protection for interest of investors.	
011826 - 012619	Chairman Mr WONG Ting-kwong Mr Alan LEONG The Listing Committee	<p>The Chairman re-iterated that the Subcommittee decided at the last meeting on 1 December 2011 that he, as the Subcommittee Chairman, would move a motion at the Council to repeal the Amendment Notice if the Administration did not move such a motion. He asked whether members had any views on the Subcommittee's decision.</p> <p>Mr WONG Ting-kwong moved a motion to reverse the Subcommittee's decision, i.e. the Chairman of the Subcommittee would not move the motion to repeal the Amendment Notice on behalf of the Subcommittee.</p> <p>Mr Alan LEONG's comment that it was important for Hong Kong to be on par with other major international financial markets. He noted that all jurisdictions had adopted far less stringent valuation requirements for non-property companies and queried the justification for holding up the Amendment Notice because of the cases involving Companies 10, 11 and 12.</p> <p>The Chairman re-iterated the importance of the prospectus in providing valuation and useful information on a company when applied for listing in assisting investors in making correct investment decisions.</p> <p>Mr Alan LEONG's enquiry about means to protect investors against a <i>de facto</i> property company presenting itself as a non-property company in the course of listing</p> <p>The Listing Committee's responded that listing applicant had to undergo stringent scrutiny by SFC, HKEx and the Listing Committee during the listing process. There were provisions in the Securities and Futures Ordinance and Companies Ordinance to ensure sufficient provision of company information for protecting the interests of investors. To maintain Hong Kong's competitiveness, it was</p>	

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		necessary to bring Hong Kong's property valuation requirements closer to those in other major developed markets, while ensuring that useful and material information was made available to investors.	
012620 - 012721	Mr Alan LEONG Chairman	Mr Alan LEONG remarked that he supported Mr WONG Ting-kwong's motion that the Subcommittee's decision at the meeting on 1 December 2011 be reversed. The Chairman's concluding remarks that -- (a) Mr WONG Ting-kwong's motion was passed; and (b) he would move a motion in his own name to repeal the Amendment Notice at the Council meeting on 14 December 2011	