

**立法會**  
***Legislative Council***

LC Paper No. CB(1)870/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

**Bills Committee on Companies (Amendment) Bill 2003**

**Minutes of the tenth meeting  
held on Thursday, 8 January 2004, at 10:45 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Albert HO Chun-yan  
Dr Hon Eric LI Ka-cheung, GBS, JP  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai  
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Henry WU King-cheong, BBS, JP
- Public officers attending** : Financial Services and the Treasury Bureau  
  
Mrs Dorothy MA  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 1  
  
Miss Jenny CHOI  
Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 1

Department of Justice

Mr John WILSON  
Consultant Counsel

Mr Allen LAI  
Senior Government Counsel

Ms Carmen CHU  
Senior Government Counsel

**Attendance by invitation** : Securities and Futures Commission

Mr Ashley ALDER  
Executive Director

Mr William PEARSON  
Director

Ms Sonia LEUNG  
Senior Manager

**Clerk in attendance** : Ms Anita SIT  
Chief Council Secretary (1)6

**Staff in attendance** : Miss Monna LAI  
Assistant Legal Adviser 7

Mr Matthew LOO  
Senior Council Secretary (1)3

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**I Confirmation of minutes of meeting**

LC Paper No. CB(1)721/03-04 - Minutes of meeting on 18 December 2003

The minutes of the meeting held on 18 December 2003 were confirmed.

## **II Meeting with the Administration**

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|-----------------------------------|--|
| LC Paper No. CB(1)698/03-04 (01)  | - Administration's paper on offences relating to amendment of prospectuses   |
| LC Paper No. CB(1)698/03-04 (02)  | - Proposed additional Committee Stage amendments provided by the Administration on 2 January 2004  |
| LC Paper No. CB(1)698/03-04 (03)  | - List of issues requiring follow-up actions by the Administration (Position as at 7 January 2004)                                       |
| LC Paper No. CB(3)733/02-03       | - Bill gazetted on 13 June 2003  |
| LC Paper No. CB(1)2228/02-03 (03) | - Marked-up copy of Schedule 1 and related consequential and other amendments in Schedule 5 of the Bill                                  |
| LC Paper No. CB(3)387/03-04 (03)  | - Proposed Committee Stage amendments provided by the Administration on 21 November 2003   |
| LC Paper No. CB(1)419/03-04 (02)  | - Marked-up copy of the proposed Committee Stage amendments  |
| LC Paper No. CB(1)598/03-04 (01)  | - Administration's paper on Securities and Futures Commission's statutory power to make rules and statutory duty to conduct consultation |
| LC Paper No. CB(1)2441/02-03 (01) | - Letter dated 10 September 2003 from Assistant Legal Adviser 7 (ALA7) to the Administration on Schedule 1 of the Bill                   |
| LC Paper No. CB(1)74/03-04 (01)   | - Administration's response dated 26 September 2003  |
| LC Paper No. CB(1)74/03-04 (02)   | - Letter dated 9 October 2003 from ALA7 to the Administration on Schedule 1 of the Bill  |
| LC Paper No. CB(1)84/03-04 (01)   | - Administration's response dated 15 October 2003  |

- LC Paper No. CB(1)419/03-04 (01) - Letter dated 25 November 2003 from ALA7 to the Administration on the proposed Committee Stage amendments to Schedule 1 of the Bill
- LC Paper No. CB(1)458/03-04 (01) - Letter dated 26 November 2003 from ALA7 to the Administration on the Securities and Futures Commission's plan to set out on its website the exemption particulars granted under "all relevant prospectus-related provisions"
- LC Paper No. CB(1)528/03-04 (01) - Letter dated 28 November 2003 from ALA7 to the Administration on the proposed amendments to section 7 of Part 1 of the proposed 17<sup>th</sup> Schedule
- LC Paper No. CB(1)528/03-04 (02) - Administration's response dated 4 December 2003
- LC Paper No. CB(1)528/03-04 (03) - Administration's response dated 5 December 2003

2. The Bills Committee continued the clause-by-clause examination of Schedule 1 of the Bill (Amendments to the Companies Ordinance relating to Prospectuses) and the relevant consequential amendments in Schedule 5 of the Bill.

3. The following papers were tabled at the meeting -

- (a) Marked-up copy of the proposed additional Committee Stage amendments (CSAs) provided by the Administration on 2 January 2004; and
- (b) Letter dated 7 January 2004 from ALA7 to the Administration on proposed additional CSAs to section 7 of Part 1 of the 17<sup>th</sup> Schedule of the Bill.

*(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)732/03-04 on 9 January 2004.)*

4. The Chairman requested the Administration to consult Ms Alice CHAN, Lecturer, Department of Professional Legal Education, The University of Hong Kong, on the proposed CSAs to section 7 of Part I of the proposed 17<sup>th</sup> Schedule, and report to the Bills Committee if Ms CHAN had any comments on the proposed CSAs. The Administration agreed.

5. On Dr Eric LI's concern about the role of the Administration in initiating legislative proposals in respect of the exemption and amendment powers under sections 38A, 342A and 360 and in conducting the related public consultation, the Administration said that the Securities and Futures Commission (SFC) was an independent statutory regulator responsible for maintaining and promoting the fairness and efficiency of the securities and futures market. Regulatory experiences indicated that there was a practical need for SFC to be vested with the power to make subsidiary legislation prescribing detailed and technical requirements, and to perform the duty to consult on the contents of the draft subsidiary legislation so made. This arrangement was in line with public expectation and international practices. Hence, it would not be appropriate for the Administration to take over these roles from SFC, which possessed the relevant knowledge and expertise.

6. Dr Eric LI said that the first time he raised the concern was when the Bills Committee studied the comparison with overseas jurisdictions on the powers of SFC to amend requirements as to accounts, Schedules, tables, forms and fees (clause 24 of Schedule 1 of the Bill). At the time, he noted that different arrangements were adopted in overseas jurisdictions. For example, in Australia, listing rules amendments proposed by a licensed market were subject to disallowance by the Minister. In the United Kingdom, he understood that the Financial Services Authority (FSA) was subject to the monitoring of a parliamentary oversight committee. In Singapore, the Finance Minister, instead of the market regulatory authority, was empowered to make, by order published in the Gazette, amendments to Schedules. He understood that SFC, under the existing Companies Ordinance (Cap. 32) and the Securities and Futures Ordinance (Cap. 571) (SFO), already had powers to make subsidiary legislation. However, the extent of such powers might need to be reviewed with the implementation of the Accountability

System for Principal Officials in Hong Kong. He further said that if the Chairman of SFC was included in the list of designated public officers being answerable to the Legislative Council (LegCo) and its committees, he would be satisfied with the proposals in the Bill regarding SFC's powers to make subsidiary legislation.

7. In response, the Administration advised that further enquiries with the relevant authorities in the United Kingdom confirmed that FSA was empowered to make and amend rules made by it under the relevant primary legislation, including the Listing Rules, which carried legislative effect, and FSA did not need to go through any parliamentary vetting procedures in making such rules or amendments. Although FSA was answerable to the Treasury Select Committee of the Parliament in respect of FSA's policies and the discharge of its statutory duties, there was no prescribed parliamentary procedure for the vetting of rules or amendments to rules made by FSA. In the case of Singapore, the Monetary Authority of Singapore might make regulations under a number of statutes for the better carrying out of the objects and purposes of the legislation.

8. Dr Eric LI said that while he noted that in Australia and Singapore, the regulatory authorities of overseas jurisdictions were empowered to make regulations which carried legislative effect, the responsible Minister still had a role to play such as disallowance of the regulations or amendments. He elaborated that his main concern was whilst LegCo had delegated powers to SFC to make subsidiary legislation, SFC under the current system was not directly accountable to LegCo, and the responsible Principal Official, who was directly accountable to LegCo, did not have a role to play in making the subsidiary legislation.

9. ALA7 advised that under the Interpretation and General Clauses Ordinance (Cap. 1), "public officer" meant "any person holding an office of emolument under the Government, whether such office be permanent or temporary", and hence the Chairman of SFC was not a public officer. Referring to LC Paper No. CB(3) 793/01-02 issued by the Clerk to the Legislative Council on 29 June 2002, the Chairman informed the meeting that according to the letter from the Director of Administration dated 28 June

2002, to tie in with the implementation of the Accountability System on 1 July 2002, the Chief Executive had designed under Article 62(6) of the Basic Law a list of officials to attend meetings of LegCo, its committees and subcommittees and speak on behalf of the Government. The Chairman of SFC was not included in the list.

10. Ms Emily LAU said that she did not have strong view on the matter and considered the existing arrangement acceptable, since in reality, both the Administration and SFC would be held responsible when problems with the operation of the securities and futures market arose. Mr Albert HO considered it necessary to maintain the independence of SFC in performing its regulatory functions. He appreciated the difficulty in drawing a very clear line between policies and technical matters, but concurred that SFC could be empowered to make subsidiary legislation that was mainly concerned with the technical matters of market operation. Mr CHAN Kam-lam also considered it important to maintain the existing arrangement under which SFC enjoyed regulatory independence. Requiring SFC to be directly accountable to LegCo might add a political dimension to the regulatory role of SFC and this would not be conducive to the healthy development of the market. Taking into account members' views, Dr Eric LI said that he would not pursue his concern although he did not consider the existing arrangement entirely satisfactory.

11. As regards prospectus-related offences and guidelines published by SFC under CO, members requested the Administration and SFC to consider and provide information on the following matters -

- (a) the number of summonses issued and cases convicted, and the amount of fine imposed on prospectus-related offences which were liable to a fine at level 6 under 12<sup>th</sup> Schedule of the Bill in the past three years;
- (b) whether the Hong Kong Police Force had kept the records of the convicted cases mentioned in paragraph (a) above;

- (c) whether the drafting of proposed sections 39A(2), 39B(3), 342CA(2) and 342CB(3) should be revised to make it clear that a failure to comply with the guidelines published by SFC under these sections would not by itself render a person liable to any judicial or other proceedings; and
- (d) whether the power of SFC to publish codes or guidelines under CO should be read in conjunction with the provisions under section 399 in SFO, and if so, how far section 399 in SFO applied to the provisions quoted in (c) above.

### **III Any other business**

#### Date of next meeting

12. Members noted that the next meeting would be held on Thursday, 29 January 2004 at 10:45 am. The Bills Committee will start to scrutinize Schedule 4 of the Bill (Amendments relating to shareholders' remedies) at the next meeting.

13. There being no other business, the meeting ended at 1:00 pm.

14. The index of proceedings of the meeting is at **Appendix**.



**Proceedings of the meeting of the  
Bills Committee on Companies (Amendment) Bill 2003**

**10th meeting on Thursday, 8 January 2004, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000216	Chairman	Confirmation of minutes of meeting on 18 December 2003  Welcoming and introductory remarks  The Bills Committee continued the clause-by-clause examination of clauses 25 and 26 of Schedule 1, and the relevant consequential amendments in Schedule 5 of the Bill	
000217 - 000650	Chairman Administration	<u>Clause 25 (Matters to be Specified in Prospectus and Reports to be set out therein)</u>  Section 3 of 3 <sup>rd</sup> Schedule	
000651 - 000745	Chairman Administration	Section 17 of 3 <sup>rd</sup> Schedule and related Committee Stage amendments (CSAs)	
000746 - 000824	Chairman Administration	Section 27 of 3 <sup>rd</sup> Schedule	
000825 - 001029	Chairman Administration	Sections 31 and 47 of 3 <sup>rd</sup> Schedule	

Time marker	Speaker	Subject(s)	Action required
001030 - 003051	<p>Chairman Administration Ms Emily LAU Securities and Futures Commission (SFC) ALA7 Clerk Mr Albert HO</p>	<p><u>Clause 26 (Punishment of offences under this Ordinance)</u></p> <p>12<sup>th</sup> Schedule and related CSAs</p> <p>In reply to Ms Emily LAU's enquiry about the views of the market and interested parties, the Administration advised that there were concerns about the need for some proposed offence provisions, and these concerns had been heeded in drafting the Bill and the proposed CSAs.</p> <p>As regards the levels of fines for the proposed new offences, both the Administration and the Clerk confirmed that comments received from the market and other interested parties did not touch on the levels of fines.</p> <p>The Administration further affirmed that the levels of fines for the proposed new offences were comparable to the levels of fines for similar existing offences in the Companies Ordinance (Cap. 32) (the Ordinance). The Administration had not conducted comparison on the proposed levels of fines with those adopted in overseas jurisdictions because offences relating to prospectus under other regimes were quite unique, and hence such a comparison was not practicable.</p> <p>SFC advised that if a company committed offences relating to prospectus under the Ordinance, the transactions concerned would remain valid but the company would be liable to civil claims and/or criminal prosecutions under sections 40 and 40A of the Ordinance.</p>	

Time marker	Speaker	Subject(s)	Action required
003052 - 003643	Chairman Administration Ms Emily LAU	Additional CSAs to 12 <sup>th</sup> Schedule [CB(1)732/03-04(01)]  Discrepancies in the levels of fines for certain offences between Hong Kong companies and non-Hong Kong companies	Administration undertook to review the discrepancies at Phase III of the review on the regulatory framework for offers of shares and debentures to be conducted by SFC
003644 - 003920	Chairman Administration ALA7	Additional CSAs to the proposed 17 <sup>th</sup> Schedule  ALA7's comments on the drafting of proposed additional CSAs to section 7 of Part 1 of the 17 <sup>th</sup> Schedule [CB(1)732/03-04(02)]	Administration to take the follow up action set out in paragraph 4 of the minutes
003921 - 004151	Chairman Administration ALA7	<u>Schedule 5 of the Bill - relevant consequential and related amendments to the Bill</u>  Section 103 of the Securities and Futures Ordinance (Cap. 571) (SFO)	
004152 - 004520	Chairman Administration ALA7 Mr Albert HO	Section 175 of SFO	
004521 - 004602	Chairman ALA7	Part 1 of Schedule 1 of SFO	
004603 - 005415	Chairman ALA7 Ms Emily LAU Mr Albert HO Administration	<u>Additional proposed CSAs to the Bill</u> [CB(1)419/03-04(02), CB(1)698/03-04 (02) &CB(1)732/03-04 (01)]  Additional CSAs to section 38A	
005416 - 005521	Chairman Administration	Additional CSAs to section 39B	
005522 - 005628	Chairman ALA7 Administration	Additional CSAs to section 342	

Time marker	Speaker	Subject(s)	Action required
005629 - 005746	Chairman ALA7	Additional CSAs to section 342A	
005747 - 005758	Chairman	Additional CSAs to section 342CB	
005759 - 005813	Chairman	Additional CSAs to 12 <sup>th</sup> and 17 <sup>th</sup> Schedules	
005814 - 005838	Chairman ALA7	The Bills Committee completed the clause-by-clause examination of Schedule 1 of the Bill and the relevant consequential amendments, as well as the draft CSAs proposed by the Administration.	
005839 - 013359	Chairman Administration Dr Eric LI ALA7 Clerk Ms Emily LAU Mr Albert HO Mr CHAN Kam-lam	SFC's statutory power to make subsidiary legislation and statutory duty to conduct consultation under sections 38A, 342A and 360 <i>[CB(1)598/03-04 (01)]</i>	
013400 - 021327	Chairman Administration ALA7 Ms Emily LAU Mr Albert HO Dr Eric LI SFC	Offences relating to amendment of prospectuses <i>[CB(1)698/03-04 (01)]</i>	Administration to take the follow up actions set out in paragraph 11 of the minutes
021328 - 021442	Chairman Ms Emily LAU Dr Eric LI Mr Albert HO	The Bills Committee would start to scrutinize Schedule 4 of the Bill (Amendments relating to shareholders' remedies) at the next meeting.	