

**立法會**  
**Legislative Council**

LC Paper No. CB(1)172/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

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

**Minutes of the fourth meeting  
held on Friday, 17 October 2003, at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Eric LI Ka-cheung, GBS, JP  
Hon CHAN Kam-lam, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon SIN Chung-kai  
Hon Emily LAU Wai-hing, JP  
Hon Henry WU King-cheong, BBS, JP

Non-Bills Committee Member  
Hon Miriam LAU Kin-ye, JP

**Members absent** : Hon Albert HO Chun-yan  
Dr Hon Philip WONG Yu-hong, GBS

**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 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 Assistant Secretary (1)6

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

Mr Matthew LOO  
Senior Assistant Secretary (1)3

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**I Confirmation of minutes of meeting**

LC Paper No. CB(1)73/03-04 - Minutes of meeting on 2 October  
2003

The minutes of the meeting held on 2 October 2003 were confirmed.

## II Meeting with the Administration

- 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)2504/02-03(05) - Submission dated 16 September 2003 from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2521/02-03(05) - Administration's response to written submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)74/03-04(03) - Submission dated 14 October 2003 from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2504/02-03(07) - Submission dated 18 September 2003 from Ms Alice CHAN, Lecturer, Department of Professional Legal Education, The University of Hong Kong
- LC Paper No. CB(1)84/03-04(02) - Administration's response to written submission from Ms Alice CHAN, Lecturer, Department of Professional Legal Education, The University of Hong Kong
- LC Paper No. CB(1)2504/02-03(11) - Submission dated 22 September 2003 from Linklaters

- LC Paper No. CB(1)84/03-04(03) - Administration's response to written submission from Linklaters
- LC Paper No. CB(1)2504/02-03(13) - Submission dated 22 September 2003 from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)84/03-04(04) - Administration's response to written submission from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)2521/02-03(01) - Submission dated 25 September 2003 from the Hong Kong Chinese Enterprises Association
- LC Paper No. CB(1)84/03-04(05) - Administration's response to written submission from the Hong Kong Chinese Enterprises Association
- LC Paper No. CB(1)74/03-04 (04) - Summary of deputations' views prepared by the Legislative Council Secretariat (position as at 15 October 2003)
- LC Paper No. CB(1)74/03-04 (05) - List of issues requiring follow-up actions by the Administration (position as at 15 October 2003)

2. The Bills Committee noted that the meeting would be dedicated to the scrutiny 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 Bills Committee noted that the Administration would provide the paper on "Comparison of the prospectus regulatory regime between Hong Kong and overseas jurisdictions" after the meeting. The Bills Committee also noted that the following papers were tabled at the meeting -

- (a) Chinese version of the Administration's response to ALA7's letter dated 10 September 2003;
- (b) Chinese version of the Administration's response to ALA7's letter dated 9 October 2003; and
- (c) English version of the summary of deputations' views and the Administration's response on Schedule 1 of the Bill (as at 16 October 2003).

*(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)107/03-04 on 20 October 2003.)*

4. At the meeting, members requested the Administration and the Securities and Futures Commission (SFC) to consider the following matters -

Proposed new sections 38A and 360(6)-(9)

- (a) to consider whether the exemption and amendment powers of SFC under new sections 38A(2) and 38A(5) should be put on the same footing as SFC's powers of amendments under new sections 360(6)-(9), and thus should be subject to the same public consultation procedures before the relevant order of exemptions/amendments is published in the Gazette;
- (b) to provide a comparison of the exemption and amendment powers of SFC and the corresponding checks and balances under the prospectus regulatory regime (with the proposed amendments in the Bill) with the equivalent/corresponding provisions of overseas jurisdictions;

Proposed amendment to section 2(1)

- (c) to consider whether the word "company" should be used in the new definition of "prospectus" in section 2 of the Companies Ordinance (the Ordinance), and in this connection, whether there is a need to modify the existing definition of "company" in the Ordinance;

Proposed new sections 38AA and 342AB

- (d) to review proposed new sections 38AA and 342AB in view of the following concerns of the Bills Committee -
  - (i) whether there is any overlap between these proposed new sections and the existing section 41(2) and if so, the appropriate manner to deal with the overlap;
  - (ii) how the proposed sections are compared with those of other jurisdictions; and if the practices/approaches adopted by other jurisdictions are found to be different, why an approach similar to that of Singapore is adopted;
  - (iii) whether the current drafting of new sections 38AA(4) and 342AB(4) is appropriate, particularly in regard to the intended scope of persons to be regulated under the new provisions; and

- (iv) whether the current drafting of new sections 38AA(1) and 342AB(1) is sufficient to achieve the intended regulatory objective if under the current drafting of the provisions, a sale or offer for sale of shares in or debentures of a company made without any documentation is not subject to these sections;

Proposed deletion of sections 38D(3)(b)(i) and (ii) and 342C(3)(b)(i) and (ii) and proposed addition of sections 38D(3A) and 342C(3A)

- (e) to review the above proposed amendments in view of the following concerns of the Bills Committee -
  - (i) whether the duration of the inspection period (i.e. not less than 14 days from the date of publication of the prospectus) and the new arrangement that the documents will be available for inspection only at the company's registered office in Hong Kong, instead of at the Companies Registry (CR) as the case at present, can achieve the policy objective of enhancing information disclosure for better investor protection;
  - (ii) whether the scope of information available for public inspection is appropriate and whether there are sufficient safeguards for personal data privacy;
  - (iii) whether under the proposed new arrangement, the company concerned can impose a charge on a request for inspection of the documents concerned;
  - (iv) whether under the proposed new arrangement, members of the public are allowed to obtain copies of the documents concerned, and if so, whether there is a need to specify in the legislation how the company concerned should charge such copies; and
  - (v) whether CR can maintain records of the prospectus issued together with the material contracts stated in the prospectus etc. for public inspection throughout the whole life of the financial product concerned; if the answer to this question is in the affirmative, what public inspection arrangements the Administration would propose to ensure that the services are user-friendly and provided at reasonable charges, and will not have undue resource implications on CR.

5. As regards members' concern set out in paragraph 4(c) above, ALA7 would check whether the word "company" used in the new definition of "prospectus" would be affected by the proposed amendments under Schedule 3 of the Bill.

### **III Any other business**

#### Dates of next meeting

6. Members noted that, according to the timetable agreed at the previous meeting, the next meeting would be held on 30 October 2003 at 10:45 am.
7. There being no other business, the meeting ended at 12:50 pm.
8. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
28 October 2003

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

**4th meeting on Friday, 17 October 2003, 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 - 000020	Chairman	Confirmation of minutes of meeting on 2 October 2003	
000021 - 000233	Chairman	Welcoming and introductory remarks	
000234 - 001850	Admin Chairman Securities and Futures Commission (SFC)	Briefing on the proposed amendments relating to prospectuses under Schedule 1 of the Bill	
001851 - 002747	Mr SIN Chung-kai SFC Chairman	Scope of exemption powers conferred on SFC under <b>proposed section 38A</b> of the Companies Ordinance (the Ordinance)	
002748 - 002934	Mr Henry WU Chairman Admin	Overseas examples of exemption and amendment powers akin to those conferred on SFC under <b>proposed sections 38A and 360</b> of the Ordinance and the corresponding monitoring mechanism	Administration to take the follow up action set out in paragraph 4(b) of the minutes
002935 - 003149	Chairman	Administration's response to written submissions relating to Schedule 1 of the Bill ( <i>LC Paper No. CB(1)107/03-04 tabled at the meeting</i> )	
003150 - 003243	Admin Chairman	Administration's response to the general comments on Schedule 1 of the Bill	



Time marker	Speaker	Subject(s)	Action required
003244 - 003417	Chairman Admin Ms Emily LAU ALA7	<u>Section 1 of Schedule 1 of the Bill - Interpretation</u> Administration's response to the concern of the Hong Kong Institutes of Company Secretaries (HKICS) as to when an "offer to the public" arises under the new definition of "prospectus"	
003418 - 004042	Chairman Admin ALA7 Ms Emily LAU	<u>Section 1 of Schedule 1 of the Bill - Interpretation</u> Administration's response to the views of Ms Alice CHAN, Lecturer of Department of Professional Legal Education, University of Hong Kong regarding the use of the word "company" in the proposed definition of "prospectus"	Administration to take the follow up action set out in paragraph 4(c) of the minutes  ALA to take the follow up action set out in paragraph 5 of the minutes
004043 - 004316	Chairman Admin	<u>Sections 3 and 24 of Schedule 1 of the Bill - SFC's powers of exemption and amendment</u> Administration's response to the views of Ms Alice CHAN regarding SFC's powers of exemption and amendment under proposed <b>sections 38A and 360</b> of the Ordinance	
004317 - 004721	Mr Henry WU SFC Ms Emily LAU	<u>Sections 3 and 24 of Schedule 1 of the Bill - SFC's powers of exemption and amendment</u> Statutory obligation of SFC to publish a notice/order in the Gazette which would be subject to negative vetting by the Legislative Council (LegCo) when the powers of exemption and amendment were exercised, except for the power of exemption under proposed section 38A(1)	

Time marker	Speaker	Subject(s)	Action required
004722 - 005151	Chairman Ms Emily LAU SFC	Types of exemption and amendment powers conferred on SFC under proposed <b>sections 38A and 360</b> of the Ordinance	
005152 - 005300	Chairman Admin	Statutory requirements on SFC to invite representations by the public on the draft of the proposed order prior to its gazettal under <b>proposed section 360</b> of the Ordinance	
005301 - 005330	Chairman Admin	The absence of public consultation requirement under <b>proposed section 38A</b> of the Ordinance	
005331 - 005459	Chairman ALA7	Scrutiny period of subsidiary legislation under negative vetting by LegCo	
005460 - 010505	Ms Emily LAU Chairman Admin Mr Eric LI Mr Henry WU ALA7	<ul style="list-style-type: none"> <li>• The propriety of the negative vetting procedure for relevant order of exemptions/amendments published by SFC in the Gazette under proposed <b>sections 38A and 360</b> of the Ordinance</li> <li>• The propriety of applying the same public consultation procedures stipulated in <b>proposed sections 360(7) and 360(8)</b> to the exemption powers under <b>proposed sections 38A(2) and 38A(5)</b></li> <li>• Public consultation procedures under <b>proposed sections 360(7) and 360(8)</b> may be waived by SFC under <b>proposed section 360(9)</b></li> </ul>	Administration to take the follow up action set out in paragraph 4(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
010506 - 010620	Chairman Mr Eric LI Mr Henry WU	The need for public consultation when SFC exercised its powers of exemption and amendment under <b>proposed sections 38A(2) and 38A(5)</b> of the Ordinance	
010621 - 011605	Chairman Admin SFC	<u>Sections 4 and 17 of Schedule 1 of the Bill - Sale, etc. of shares or debentures acquired pursuant to offer specified in Part I of the Seventeenth Schedule</u> Administration's response to the views of Linklaters regarding proposed <b>sections 38AA and 342AB</b> of the Ordinance	
011606 - 013145	Chairman Ms Emily LAU SFC Mr Henry WU Mr Eric LI Admin	<ul style="list-style-type: none"> <li>• Practices/approaches adopted by different jurisdictions to prevent abuse of exemptions provided under the prospectus regulatory regime</li> <li>• Rationale for the Administration to adopt an approach similar to that of Singapore</li> <li>• Intended scope of persons to be regulated under <b>proposed sections 38AA and 342AB</b>, and whether there is any overlap of these new sections with the existing section 41(2)</li> </ul>	Administration to take the follow up actions set out in paragraphs 4(d)(ii) and 4(d)(iii) of the minutes

Time marker	Speaker	Subject(s)	Action required
013146 - 013430	Chairman ALA7 SFC Mr Eric LI	<ul style="list-style-type: none"> <li>• United Kingdom's approach in preventing abuse of exemptions</li> <li>• A sale or offer for sale of shares in or debentures of a company made without any documentation not covered by <b>proposed sections 38AA(1) and 342AB(1)</b></li> </ul>	Administration to take the follow up action set out in paragraph 4(d)(iv) of the minutes
013431 - 013925	Chairman Ms Miriam LAU Mr Henry WU Ms Emily LAU	<ul style="list-style-type: none"> <li>• The need to address possible overlap of <b>proposed sections 38AA and 342AB</b> with the existing section 41(2)</li> <li>• Care to be exercised when drawing reference from overseas jurisdictions</li> </ul>	Administration to take the follow up action set out in paragraph 4(d)(i) of the minutes
013926 - 014040	Chairman	Administration to respond to members' concerns at the next meeting	
014041 - 014216	Mr Henry WU	Intended scope of persons to be regulated under <b>proposed sections 38AA and 342AB</b>	
014217 - 014302	Chairman Admin SFC	<u>Section 5 of Schedule 1 of the Bill - Advertisements concerning prospectus</u> Administration's response to the suggestions of HKICS on advertisements concerning prospectus	

Time marker	Speaker	Subject(s)	Action required
014303 - 014448	Chairman Admin Ms Emily LAU ALA7	<u>Section 5 of Schedule 1 of the Bill - Interpretation of provisions relating to prospectus</u> Administration's response to the concerns of the Hong Kong Chinese Enterprises Association about the meaning of "untrue statement" and the need to have a disclosure standard or guidelines on "material omission"	
014449 - 014629	Chairman Admin ALA7	<u>Sections 7 and 19 of Schedule 1 of the Bill - Registration of prospectus</u> Administration's response to the concerns of the Office of the Privacy Commissioner for Personal Data, Hong Kong about the amount of information to be disclosed for public inspection	
014630 - 020226	Chairman ALA7 SFC Mr Eric LI Ms Miriam LAU Admin	<ul style="list-style-type: none"> <li>• Duration of the inspection period under <b>proposed sections 38D(3A) and 342C(3A)</b> of the Ordinance</li> <li>• Feasibility of maintaining the records of prospectus and related documents in the Company Registry</li> <li>• Scope of information available for public inspection and safeguards for personal data privacy</li> <li>• Arrangements to ensure that services for public inspection are user-friendly and cost-effective</li> </ul>	Administration to take the follow up actions set out in paragraph 4(e) of the minutes
020227 - 020252	Chairman	Date of next meeting	