

**立法會**  
**Legislative Council**

LC Paper No. CB(1)291/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

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

**Minutes of the fifth meeting**  
**held on Thursday, 30 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 SIN Chung-kai  
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon Henry WU King-cheong, BBS, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
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)172/03-04 - Minutes of meeting on 17 October 2003

The minutes of the meeting held on 17 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)84/03-04 (06) - "Comparison of the prospectus regulatory regime between Hong Kong and overseas jurisdictions" provided by the Administration
- LC Paper No. CB(1)107/03-04 (01) - Summary of deputations' views and the Administration's response on Schedule 1 of the Bill (position as at 16 October 2003)
- LC Paper No. CB(1)173/03-04 (01) - List of issues requiring follow-up actions by the Administration (position as at 28 October 2003)
- LC Paper No. CB(1)173/03-04 (03) - Administration's letter dated 24 October 2003 to various organizations on proposed amendments to the Companies Ordinance to facilitate offers of shares and debentures (Sections 38D and 342C)

2. At this meeting, the Bills Committee continued 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 following papers were tabled at the meeting -
  - (a) Written submission (in Chinese only) from the Hong Kong Small and Medium enterprises Association; and
  - (b) Administration's paper on "Exemption powers of the Securities and Futures Commission" (English version).

*(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)217/03-04 on 31 October 2003. The Chinese version of the paper stated in (b) above was circulated vide CB(1)255/03-04 on 4 November 2003.)*

4. At the meeting, the Administration acknowledged that the exact scope of coverage of the expressions "body corporate" and "corporation" might be vague in the existing Companies Ordinance (the Ordinance) when read together with section 103(3)(a)(ii) of the Securities and Futures Ordinance (Cap. 571). However, the Administration assured members that the construction of the current provisions containing these terms in the Ordinance together with the proposed amendments in the Bill would only give rise to overlaps but no gap in the prospectus regulatory regime under the Ordinance. As rationalization of the definitions of these expressions would involve reviewing a number of provisions in the Ordinance as well as provisions in other related laws, and this would go far beyond the scope of the Bill, the Administration suggested and the Bills Committee agreed not to tackle this issue in the context of this Bill. The Administration undertook to examine the matter in the overall restructuring and rewriting of the Ordinance and/or the impending comprehensive review of the laws and procedures governing public offers of securities as appropriate. The Bills Committee and the Administration also agreed to make a remark on this issue at the resumption of the Second Reading debate of the Bill.

5. On the concern of the Hong Kong Institute of Company Secretaries (HKICS) about the use of plain language in prospectuses to enable the investing public to make informed investment decision, the Bills Committee requested and the Administration agreed to contact the HKICS to see if the Institute was satisfied that the work being done by the Securities and Futures Commission and the Stock Exchange of Hong Kong to promote the use of plain language in prospectuses was adequate.

6. Regarding the exemption provision under section 8 of Part 1 of the proposed Seventeenth Schedule, to facilitate the Bills Committee's further deliberation on whether a proper balance had been struck between facilitating the offer of shares/debentures and investor protection in the proposed scope of "qualifying persons" under the exemption provision, the Administration was requested to provide further information on the following -

- (a) whether the market had been consulted on the scope of "qualifying persons", and if so, what the views of the market were;

- (b) the equivalent/corresponding provisions in the United States; and
- (c) regulatory experience in overseas jurisdictions, including the regulatory problems encountered in administering similar exemptions.

### **III Any other business**

#### Dates of next meeting

- 7. Members noted that, according to the timetable agreed at the previous meeting, the next meeting would be held on 13 November 2003 at 10:45 am.
- 8. There being no other business, the meeting ended at 12:48 pm.
- 9. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
10 November 2003

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

**5th meeting on Thursday, 30 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 - 000025	Chairman	Confirmation of minutes of meeting on 17 October 2003	
000026 - 000450	Chairman	Welcoming and introductory remarks	
000451 - 003816	Chairman ALA7 Admin Securities and Futures Commission (SFC) Ms Emily LAU Dr Eric LI	<ul style="list-style-type: none"> <li>• Miss Alice CHAN's comments on the proposed definition of "prospectus" and her suggested use of the words "body corporate or corporation" in place of "company" in the definition <i>(CB(1)2504/02-03 (07))</i></li> <li>• ALA7's observations about the definitions and usage of "company", "body corporate" and "corporation" in the Companies Ordinance (CO) and section 103 of the Securities and Futures Ordinance (Cap. 571)</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"><li data-bbox="722 241 1142 958">• Administration's confirmation that the current drafting of the definition of "prospectus" in which the term "company" is specified as "including a company incorporated outside Hong Kong, and whether or not it has established a place of business in Hong Kong" is consistent with the other provisions on prospectuses in CO, and is sufficiently clear in reflecting the intended scope of application of the provisions on prospectuses</li><li data-bbox="722 981 1142 1518">• SFC's confirmation that notwithstanding the existence of vagueness in respect of the terms "body corporate" and "corporation" in CO and the SFO, there is only overlap but no gap in the prospectus regulatory regime in CO and the application of Part II and Part XII is well understood by the business sector</li></ul>	



Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> <li>• The Administration suggested and the Bills Committee agreed not to tackle the definitions of "company", "body corporate" and "corporation" in CO in this exercise but make a remark on this issue at the resumption of the Second Reading debate on the Bill</li> <li>• The Administration undertook to examine this issue in the overall restructuring and rewriting of CO</li> </ul>	Clerk and Admin to take the action set out in paragraph 4 of the minutes.
003817 - 003956	Chairman Admin ALA7	<p><u>Clause 13 of Schedule 1 of the Bill - Construction of references to offering shares or debentures to the public</u></p> <p>Administration's response to the comments of Ms Alice CHAN, Lecturer of Department of Professional Legal Education, University of Hong Kong on the <b>proposed addition of subsection (3) to section 48A</b></p>	

Time marker	Speaker	Subject(s)	Action required
003957 - 004836	Chairman Admin ALA7 Dr Eric LI SFC Ms Emily LAU	<p><u>Clause 25 of Schedule 1 of the Bill - Matters to be specified in prospectus and reports to be set out therein</u></p> <ul style="list-style-type: none"> <li>• Administration's response to the comments of Ms Alice CHAN</li> <li>• SFC's confirmation that the proposed amendment to <b>section 3 of the Third Schedule</b> will not result in lowering the standard of investor protection</li> <li>• SFC's confirmation that SFC will not issue guidelines on Part 1 of the Third Schedule as the provisions therein do not confer discretionary powers on SFC</li> </ul>	
004837 - 005215	Chairman Admin Ms Emily LAU	<p><u>Clause 25 of Schedule 1 of the Bill - Matters to be specified in prospectus and reports to be set out therein</u></p> <p>Administration's response to the comment of the Hong Kong Institute of Company Secretaries on the need to promote the use of plain language for prospectuses</p>	Administration's to take the action set out in paragraph 5 of the minutes
005216 - 005938	Chairman Admin Ms Emily LAU ALA7 Dr Eric LI	<p><u>Proposed Seventeenth and Eighteenth Schedules</u></p> <p>Administration's response to the comments of Linklaters on the legending requirements in respect of some types of exempted offers</p>	

Time marker	Speaker	Subject(s)	Action required
005939 - 010407	Chairman Admin SFC	<p><u>Section 3 of Part 1 of the proposed Seventeenth Schedule</u></p> <p>Administration's response to the comments of Ms Alice CHAN on the proposed threshold of HK\$5 million</p>	
010408 - 010740	Chairman Admin Mr SIN Chung-kai Dr Eric LI	<p><u>Sections 3 and 4 of Part 1 of the proposed Seventeenth Schedule</u></p> <ul style="list-style-type: none"> <li>• Administration's response to the comments of Ms Alice CHAN on the proposed minimum denomination or consideration of HK\$500,000 under section 4 of Part 1</li> <li>• Administration's undertaking to draft amendments to the Bill to the effect that the monetary thresholds referred to in sections 3 and 4 of Part 1 would include their equivalent in other currencies</li> </ul>	
010741 - 011004	Chairman Admin ALA7	<p><u>Section 7 of Part 1 of the proposed Seventeenth Schedule</u></p> <p>Administration's response to the comments of Ms Alice CHAN on the drafting and intended coverage of this section</p>	

Time marker	Speaker	Subject(s)	Action required
011005 - 015141	Chairman Admin Mr SIN Chung-kai Ms Emily LAU ALA7 SFC Dr Eric LI	<p><u>Section 8 of Part 1 of the proposed Seventeenth Schedule</u></p> <ul style="list-style-type: none"> <li>• Administration's response to the comments of Ms Alice CHAN on extending the exempted offer to cover "consultants" and "former consultants" of the company</li> <li>• Mr SIN's query on inclusion of "dependents" of a director, employer, officer, consultant, former director, former employee, former officer or former consultant of the company as "qualifying person" under the proposed exemption provision</li> <li>• Scope of persons covered in comparable exemption provisions in Australia, United Kingdom and Singapore</li> </ul>	Administration to take the action set out in paragraph 6 of the minutes
015142 - 015401	Chairman Admin	<p><u>Section 8 of Part 1 of the proposed Twenty-first Schedule</u></p> <p>Administration's response to the suggestion of Linklaters to allow flexibility in the timing of updating programme prospectuses</p>	
015402 - 015449	Chairman Admin	<p><u>Section 11(a)(ii) of Part 1 of the proposed Seventeenth Schedule</u></p> <p>Administration to respond to the comments of Ms Alice CHAN on this section at the next meeting</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
015450 - 020038	Chairman Admin	Date of next meeting and the schedule of work for the next two meetings	

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