

立法會
Legislative Council

LC Paper No. CB(1)386/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the sixth meeting
held on Thursday, 13 November 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 Albert HO Chun-yan
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong, GBS
Hon Henry WU King-cheong, BBS, JP
- Members absent** : Hon CHAN Kam-lam, JP
Hon Emily LAU Wai-hing, 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 Assistant Secretary (1)6

Staff in attendance : Miss Monna LAI
Assistant Legal Adviser 7

Mr Matthew LOO
Senior Assistant Secretary (1)3

I Confirmation of minutes of meeting

LC Paper No. CB(1)291/03-04 - Minutes of meeting on 30 October 2003

The minutes of the meeting held on 30 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)292/03-04 (01) - 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)266/03-04 (01) - Submission dated 4 November 2003 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)217/03-04 (01) - Submission dated 21 October 2003 from Hong Kong Small and Medium Enterprises Association
- LC Paper No. CB(1)292/03-04 (02) - Administration's paper on "Resale restrictions on shares/debentures acquired under offers specified in the Seventeenth Schedule"

- LC Paper No. CB(1)292/03-04 (03) - Administration's paper on "Inclusion of "dependents" as "qualifying persons" under section 8 of Part 1 of the Seventeenth Schedule"
- LC Paper No. CB(1)217/03-04 (02) - Administration's paper on "Exemption powers of the Securities and Futures Commission"
- 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)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)
- LC Paper No. CB(1)292/03-04 (04) - Summary of deputations' views and the Administration's response on Schedule 1 of the Bill (position as at 12 November 2003)
- LC Paper No. CB(1)309/03-04 (02) - List of issues requiring follow-up actions by the Administration (position as at 12 November 2003)

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 Administration's response to the written submission from Hong Kong Small and Medium Enterprises Association was tabled at the meeting.

(Post-meeting note: The paper was circulated to members vide LC Paper No. CB(1)323/03-04 on 14 November 2003.)

III Any other business

Dates of next meeting

4. Members noted that the next meeting would be held on 27 November 2003 at 10:45 am.
5. There being no other business, the meeting ended at 12:50 pm.
6. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
26 November 2003

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

**6th meeting on Thursday, 13 November 2003, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000205	Chairman	Confirmation of minutes of meeting on 30 October 2003	
000206 - 000301	Chairman Admin	Welcoming and introductory remarks	
000302 - 002303	Chairman Admin Mr Albert HO Securities and Futures Commission (SFC)	<p><u>Proposed sections 38A and 342A -</u> Exemption and amendment powers of SFC (<i>CB(1)217/03-04 (02)</i>)</p> <ul style="list-style-type: none"> • Mr Albert HO's concern on whether a minimum period of consultation should be stipulated in the legislation • The Administration's explanation on the need to provide SFC with flexibility to deal with legislative amendments which sometimes may be urgently required to accommodate the needs of the rapidly changing markets, and that the negative vetting procedure will serve as a back-stop measure in case public consultation has not been properly conducted • Mr Albert HO's expression of reservation on not including a minimum consultation period in the legislation 	
002304 - 003103	Chairman SFC	<p><u>Proposed sections 38A and 342A -</u></p> <ul style="list-style-type: none"> • Exemption and amendment powers of SFC (<i>CB(1)217/03-04 (02)</i>) • Administration's explanation on the need to retain "as it considers appropriate" in proposed sections 38A(6)/342A(6) 	

Time marker	Speaker	Subject(s)	Action required
003104 - 005040	Chairman Admin Mr Albert HO Mr SIN Chung-kai	<p><u>Proposed sections 38AA and 342AB</u></p> <ul style="list-style-type: none"> • Resale restrictions on shares/debentures acquired under offers specified in the proposed Seventeenth Schedule (CB(1)292/03-04 (02)) • Mr Albert HO's query on the rationale for setting "50 persons" as the maximum threshold for the small-scale offer exemption provision under paragraph 2 of Part 1 of proposed Seventeenth Schedule • Administration's explanation that "50 persons" is also used as the maximum threshold in the equivalent provision in Financial Services and Market Act 2000 of the United Kingdom 	
005041 - 014502	Chairman Admin ALA7 Mr SIN Chung-kai SFC Mr Albert HO Dr Eric LI Mr Henry WU Mrs Sophie LEUNG	<p><u>Paragraph 8 of Part 1 of the proposed Seventeenth Schedule</u></p> <ul style="list-style-type: none"> • Scope of "qualifying persons" (CB(1)292/03-04 (03)) (CB(1)84/03-04 (06)) • Concern of Mr SIN Chung-kai and Mr Albert HO about the possible lack of knowledge of some employees and their dependents of the financial conditions of the company and thus inclusion of these employees and their dependents under the proposed exemption scheme may subject them to certain risks not made known to them • Administration's explanation as per CB(1)292/03-04 and reference to sections 107 and 108 of the Securities and Futures Ordinance (SFO) being statutory safeguards against misrepresentation and untrue statements 	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> • ALA7's advice that requirements for prospectus under section 38 of the Companies Ordinance (CO) will not apply to the offer of shares or debentures by a company to the qualifying persons if the shares/debentures of the company are listed on a recognized stock market. The application of paragraph 8 of Part 1 of the Seventeenth Schedule is thus restricted to the initial offering of shares or debentures of a company listed on a recognized stock market or the offering of shares or debentures of companies not listed on a recognized stock market • ALA7 pointed out that there was no court decision on the Administration's interpretation of "domestic concern" under section 48A of CO • Mr Albert HO maintained his reservation and might revisit the issue after further consideration 	
014503 - 015846	Chairman Admin ALA7 SFC	<ul style="list-style-type: none"> • Administration's response to the comments of Ms Alice CHAN regarding paragraph 11 of proposed Seventeenth Schedule <i>(CB(1)292/03-04 (01))(CB(1)266/03-04 (01))</i> • ALA7 explained the difference between issue to existing debenture holders under section 38(5) and section 342(5) and exchange of debentures under paragraph 11 of proposed Seventeenth Schedule 	
015847 - 015901	Chairman	Administration's response to the submission from Hong Kong Small and Medium Enterprises Association tabled	

Time marker	Speaker	Subject(s)	Action required
015902 - 020120	Chairman Admin	Administration to provide before the next meeting the results of its further consultation on proposed sections 38D(3A) and 342C(3A), and its response to the second submissions of Ms Alice CHAN and the Office of the Privacy Commissioner for Personal Data	
020121 - 020202	Chairman Admin	Administration's report on the positive response of the Hong Kong Institute of Company Secretaries regarding the work being done by SFC and SEHK to promote the use of plain language in prospectuses	
020203 - 020313	Chairman Admin	Date of next meeting and the schedule of work for the next meeting Administration to provide the draft Committee Stage amendments before the next meeting	

Council Business Division 1
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 26 November 2003