

立法會
Legislative Council

LC Paper No. CB(1)521/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the seventh meeting
held on Thursday, 27 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 CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Emily LAU Wai-hing, JP
Hon Henry WU King-cheong, BBS, JP
- Members absent** : 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 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)386/03-04 - Minutes of meeting on 13 November 2003

The minutes of the meeting held on 13 November 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)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)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)387/03-04 (01) - Administration's response to written submission 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

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| 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)309/03-04 (01) | - Administration's response to written submission from Hong Kong Small and Medium Enterprises Association |
| LC Paper No. CB(1)419/03-04 (02) | - Marked-up copy of the proposed Committee Stage amendments |
| LC Paper No. CB(1)387/03-04 (03) | - Proposed Committee Stage amendments provided by the Administration on 21 November 2003 |
| LC Paper No. CB(1)387/03-04 (04) | - Administration's paper on "Registration of Material Contracts" |
| 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) | - Administration's paper on "Comparison of the prospectus regulatory regime between Hong Kong and overseas jurisdictions" |
| LC Paper No. CB(1)387/03-04 (05) | - Summary of deputations' views and the Administration's response on Schedule 1 of the Bill (position as at 26 November 2003) |
| LC Paper No. CB(1)387/03-04 (06) | - List of issues requiring follow-up actions by the Administration (position as at 26 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 following papers were tabled at the meeting -

(a) Administration's response to the second written submission from Ms Alice CHAN, Lecturer, Department of Professional Legal Education, The University of Hong Kong; and

(b) Letter dated 25 November 2003 from ALA7 to the Administration.

(Post-meeting note: The papers were circulated to members vide LC Paper No. CB(1)458/03-04 on 28 November 2003.)

III Any other business

Dates of next meeting

4. Members noted that the next meeting would be held on Tuesday, 9 December 2003 at 4:30 pm. The Bills Committee would proceed to clause-by-clause examination of Schedule 1 of the Bill and the relevant consequential amendments in Schedule 5 of the Bill at the next meeting.

5. There being no other business, the meeting ended at 12:50 pm.

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

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

**7th meeting on Thursday, 27 November 2003, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000350	Chairman	Confirmation of minutes of meeting on 13 November 2003	
000351 - 000424	Chairman	Welcoming and introductory remarks	
000425 - 000805	Chairman Admin	Briefing by the Administration on the results of the consultation on registration of material contracts, and hence the proposed removal of clauses 7, 19, 25 and 26 of the Bill (CB(1)387/03-04 (04))	
000806 - 000931	Chairman Admin	Briefing by the Administration on its response to second submission from the Office of the Privacy Commissioner for Personal Data (CB(1)387/03-04 (01))	
000932 - 001445	Chairman Admin	Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on small-scale offers (paragraph 3 of Part 1 of proposed 17th Schedule)	
001446 - 001604	Chairman Admin ALA7	Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on offers for no consideration (paragraph 7 of Part 1 of proposed 17th Schedule)	

Time marker	Speaker	Subject(s)	Action required
001605 - 003808	Chairman Admin Ms Emily LAU Securities and Futures Commission (SFC) Mr Albert HO ALA7	<ul style="list-style-type: none"> • Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on offers to "qualifying persons" (paragraph 8 of Part 1 of proposed 17th Schedule) • Clarification on the coverage of "consultant" • The Administration advised that in accordance with the existing section 48A(2) of the Companies Ordinance (Cap. 32) (CO), SFC's existing practice and the understanding of market professionals was to regard an offer to "consultant" as domestic concern under and thus such an offer would not fall under the prospectus regulatory regime. The proposed exempt offer to "consultant" would provide legal certainty to the existing market practice 	
003809 - 004016	Chairman Admin	Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on SFC's powers of exemption and amendment (sections 38A and 360)	
004017 - 004828	Chairman Admin ALA7 Mr Albert HO Ms Emily LAU	<ul style="list-style-type: none"> • Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on construction of offerings to the public (section 48A(3)) • ALA7 proposed and the Bills Committee supported that the new section 48A(3) should be maintained 	

Time marker	Speaker	Subject(s)	Action required
004829 - 005830	Chairman Admin SFC	<ul style="list-style-type: none"> • Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on overall standard of disclosure in prospectus (paragraph 3 of 3rd Schedule) • The Chairman's concern about the suitability of including the phrase "the nature of persons likely to consider acquiring them" in paragraph 3 • The Administration pointed out that in the United Kingdom (UK), certain matters contained in a prospectus might reasonably be expected to be within the knowledge of professional advisers (section 80(4) of the Financial Services and Markets Act 2000) 	
005831 - 010100	Chairman Admin ALA7	<ul style="list-style-type: none"> • Briefing by the Administration on its response to the concern raised by Ms Alice CHAN on the definition of "prospectus" (section 2(1)) • ALA7 advised that the regulatory regime for foreign sovereign bond issues was provided under the Securities and Futures Ordinance (Cap. 571) (SFO) 	
Briefing by the Administration on "Comparison of the Prospectus Regulatory Regime between Hong Kong and Overseas Jurisdiction" [CB(1)84/03-04 (06)] (Time marker: 010101 - 015918)			
010101 - 010245	Chairman Admin	Exclusion of specified types of offer from the prospectus regime (clause 1 and proposed 17th Schedule)	
010246 - 010456	Chairman Admin SFC Mr Albert HO	<ul style="list-style-type: none"> • Safeguards against abuse of exclusions (clauses 4 and 17) • Additional ground for and expanded scope of exemption from prospectus-related requirements (clauses 3 and 16) 	
010457 - 010539	Chairman Admin	Facilitation of programme offers (clauses 8 and 20 and proposed 21st Schedule)	
010540 - 010940	Chairman Admin SFC	Offer awareness materials (clauses 5(b), 9 and 10) and liability for untrue statements contained therein	

Time marker	Speaker	Subject(s)	Action required
010941 - 010955	Chairman Admin	Registration of prospectus (clauses 7 and 19)	
010956 - 013625	Chairman Admin SFC Mr CHAN Kam-lam Mr Albert HO Ms Emily LAU Dr Eric LI	<ul style="list-style-type: none"> • Provision of a mechanism for amending prospectus consisting of one document (clauses 8 and 20) • SFC's explanation for not including provisions similar to those adopted in the Australian model to deal with consequences arising from amendments to prospectus, and how SFC could safeguard investors' interest through the mechanism for authorization of amendments to prospectuses 	
013626 - 013732	Chairman Admin	Clarification of information disclosure concerning "guarantor corporations" (clauses 2 and 15)	
013733 - 015330	Chairman Admin Mr Henry WU SFC Dr Eric LI ALA7	<ul style="list-style-type: none"> • The power of SFC to amend requirements as to accounts, Schedules, tables, forms and fees (clause 24) • The Administration advised that proposed section 360 was mirrored from section 398 of SFO • Mr Henry WU considered that the power conferred on SFC under proposed section 360 was very wide and proposed section 360(9) provided too much discretionary powers to SFC • Having regard the positive vetting arrangement adopted in UK, Australia and Singapore, Dr Eric LI considered that the adequacy of the proposed negative vetting arrangement for amendments relating to 3rd, 17th, 18th, 19th, 20th, 21st and 22nd Schedules of CO might need to be reviewed • The Chairman said that members' concerns would be revisited during the clause-by-clause examination of Schedule 1 of the Bill 	

Time marker	Speaker	Subject(s)	Action required
015331 - 015918	Chairman Admin SFC Mr Albert HO	<ul style="list-style-type: none"> • Power of SFC to publish guidelines relating to publications falling within section 38B(2) (clause 6) • Prospectus liability provisions (clauses 9, 10, 11, 22, 23 and 25, and proposed 21st Schedule) • SFC advised that Mr Albert HO's concern about the need to widen the scope of persons covered under the prospectus liability provisions would be considered in phase III of the review on the regulatory framework for offers of shares and debentures 	
015919 - 020433	Chairman Henry WU SFC Admin	In response to Mr Henry WU, SFC affirmed that it would consult market practitioners and investor groups on the publication of guidelines under new section 38BA, similar to what it had been doing for other guidelines affecting the securities and futures market.	
020434 - 020524	Chairman Admin ALA7	The Bills Committee would proceed to clause-by-clause examination of the Bill at the next meeting	
020525 - 020634	Chairman Admin	Date of next meeting	