

立法會
Legislative Council

LC Paper No. CB(1)597/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the eighth meeting
held on Tuesday, 9 December 2003, at 4:53 pm
in Conference Room B of the Legislative Council Building**

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

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

At 4:53 pm, with the presence of a quorum, the Chairman called the meeting to order. The Chairman advised that this meeting was called at short notice as the meeting originally scheduled to start at 4:30 pm on the same day was cancelled due to the lack of a quorum within 15 minutes of the time appointed for the meeting. In calling this urgent meeting, she had consulted the Legal Adviser of the Legislative Council Secretariat who advised that according to the Rules of Procedure, the Chairman may give direction to call a meeting with a shorter notice. She had therefore directed the Clerk to notify members of this meeting by phone followed by a pager message. Members noted the arrangements.

I Meeting with the Administration

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| 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)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 17th 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 proceeded to 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 Bills Committee noted that Mr SIN Chung-kai and Mr Albert HO, who were absent from the meeting, had raised concern about the scope of “qualifying persons” under section 8 of Part 1 of the proposed 17th Schedule (offer to persons who were “qualifying persons” was proposed not to fall within the definition of “prospectus”). The Chairman instructed the Clerk to consult the two members as to whether they would wish to revisit the issue at the Bills Committee and/or propose Committee Stage amendments (CSAs) to the provisions.

4. Dr Eric LI suggested that a company, when making an offer under section 8 of Part 1 of the proposed 17th Schedule, be required to make a declaration, which should carry legal liability, to provide assurance that the company would remain solvent, say, in the next 12 months under normal operating environment. As compliance with such a requirement might have significant implications on companies, the Administration considered that public consultation on the suggestion was required and this might cause delay to the enactment of the Bill. The Administration thus proposed to follow up the suggestion at Phase III of the review on the regulatory framework for offers of shares and debentures to be conducted by the Securities and Futures Commission (SFC). Dr Eric LI accepted the Administration’s response.

5. Dr Eric LI said that having regard to the arrangements in the United Kingdom (UK) where the Financial Services Authority was subject to the monitoring of the Parliamentary Oversight Committee, he considered that the Administration should play a leading role in initiating legislative proposals and undertaking the related public consultation in respect of the exemption powers under section 38A. Dr LI pointed out that there was no constitutional relationship between the Legislative Council (LegCo) and SFC, and when the legislative proposals were introduced to LegCo, it would be the Administration rather than SFC which would be accountable for the legislative proposals in LegCo. Moreover, with the implementation of the accountability system for principal officials in Hong Kong, he could not see a good reason for the responsible principal official to devolve the responsibility of initiating legislative proposals and conducting the related public consultation to another body which was not held accountable to LegCo. Mr Henry WU echoed Dr LI's views.

6. In response, the Administration stressed that there had been no objection to the proposed arrangements for SFC to initiate legislation under section 38A during the public consultation on the Bill. Similar provisions were also adopted in the Securities and Futures Ordinance (Cap. 571) and so far, there had been no problem with or complaint about the operation of the provisions. The Administration also pointed out that the market also supported the proposal to transfer the power to amend the Third Schedule from the Chief Executive in Council to SFC (*deletion of existing section 38(7) and introduction of new section 360(6)*). Mr Henry WU said that during the public consultation, the public might not be aware of the arrangements adopted in overseas jurisdictions. He also queried whether the Administration/SFC had put forward other options for consideration during the public consultation.

7. To facilitate the Bills Committee's consideration of the above issues, the Administration undertook to provide a paper on the issue, with information on the UK system, before the next meeting. Dr Eric LI advised that he would consider moving CSAs if the Administration did not accept his suggestion for the Administration instead of SFC to take up the leading role in initiating legislative amendments and conducting public consultation in respect of these amendments.

8. Members also requested the Administration and SFC to consider the following matters:

- (a) whether SFC would grant exemption on the ground of "unduly burdensome" even though the exemption might prejudice the interest of the investing public, as implied under the current drafting of sections 38A(1) and 38A(2); and
- (b) whether the word "issued" used in sections 38A(7) and 38A(8) should be changed to "made" in the light of similar provisions in new sections 360(6) to (9) for consistency in drafting.

9. Except for the above queries, the Bills Committee completed the clause-by-clause examination of and had no objection to clauses 1, 2 and 3, and 17th and 18th Schedule of the Bill.

II Any other business

Dates of next meeting

10. Members noted that, according to the timetable agreed at the previous meeting, the next meeting would be held on 18 December 2003 at 10:45 am. The Bills Committee would continue the 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.

11. There being no other business, the meeting ended at 6:35 pm.
12. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
17 December 2003

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

**8th meeting on Tuesday, 9 December 2003, at 4:53 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 001334	Chairman Dr Eric LI Ms Emily LAU ALA7	Welcoming and introductory remarks	
001335 - 001418	Chairman	The Bills Committee started the clause-by-clause examination of Schedule 1 and related consequential and other amendments in Schedule 5 of the Bill together with the draft Committee Stage amendments (CSAs) proposed by the Administration. [CB(1)2228/02-03 (03)] [CB(1)419/03-04 (02)] [CB(1)410/03-04(03)]	
001419 - 001734	Chairman ALA7	<u>Clause 1 (<i>Interpretation</i>) and 17th Schedule</u> Definition of "prospectus" ALA7 reminded members that at previous meetings, the Securities and Futures Commission (SFC) advised that the existing definition of "company" in the Company Ordinance was not satisfactory and the Administration had undertaken to review the definition in the context of the Phase III review of the regulatory framework for offers of shares and debentures and the future overall review of the Companies Ordinance.	

Time marker	Speaker	Subject(s)	Action required
001735 - 004300	Chairman Administration ALA7 SFC	<p><u>17th Schedule and related CSAs</u></p> <p>The concern of Mr SIN Chung-kai and Mr Albert HO about the scope of "qualifying person" under section 8 of Part 1 of proposed 17th Schedule</p> <p>The Administration reiterated that the proposed exemption scheme under section 8 of Part 1 of proposed 17th Schedule and the proposed scope of "qualifying person" under this provision were consistent with the current practice of SFC in granting exemption and the understanding of the market. Moreover, sections 107 and 108 of the Securities and Futures Ordinance (Cap. 571) provide the statutory safeguards against misrepresentation and untrue statements. The Administration however undertook to review the operation of this exemption scheme at phase III of the review on the regulatory framework for offers of shares and debentures to be conducted by SFC.</p>	<p>Clerk to take the follow up action set out in paragraph 3 of the minutes</p> <p>(<i>Post-meeting note:</i> A note to consult Mr SIN and Mr HO was issued on 11 December 2003.)</p> <p>The Administration undertook to review the operation of this exemption scheme at Phase III of the review on the regulatory framework for offers of shares and debentures to be conducted by SFC.</p>
004301 - 004420	Chairman Administration	<p><u>Clause 1 (<i>Interpretation</i>)</u></p> <p>Definition of "amend" and "offer to sell"</p>	
004421 - 004505	Chairman	<p><u>Clause 2 (<i>Specific requirements as to particulars in prospectus</i>)</u></p> <p>Proposed amendment to section 38(1A)</p>	

Time marker	Speaker	Subject(s)	Action required
004506 - 005337	Chairman Administration Dr Eric LI Mr Henry WU	<u>18th Schedule</u> Dr Eric LI suggested that in making an offer exempted under section 8 of Part 1 of the proposed 17th Schedule , a company should make a statement, which carried legal liability, in the offer document affirming that the company was a going concern and would continue in operation in the foreseeable future (say 12 months) under normal circumstances.	Administration undertook to follow up the suggestion at Phase III of the review on the regulatory framework for offers of shares and debentures.
005338 - 010730	Chairman Administration SFC ALA7	<u>Clause 2 (Specific requirements as to particulars in prospectus)</u> Proposed sections 38(3) and (7)	
010731 - 012550	Chairman Administration SFC Mr Henry WU ALA7	<u>Clause 3 (Exemption of certain persons and prospectuses from compliance with certain requirements)</u> Proposed sections 38A(1), (2), (4), (5) and (6) and related CSAs Chairman's concern as to whether SFC would grant exemption on the ground of “unduly burdensome” even though the exemption might prejudice the interest of the investing public, as implied under the current drafting of sections 38A(1) and 38A(2)	Administration to take the follow up action set out in paragraph 8(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
012551 - 015450	Chairman Administration SFC Mr Henry WU Dr Eric LI Ms Emily LAU	<p><u>Clause 3 (Exemption of certain persons and prospectuses from compliance with certain requirements)</u></p> <p>Proposed sections 38A (7) to (9) and related CSAs</p> <p>Existing arrangement of public consultation arranged by SFC</p> <p>Role of the Administration in initiating legislative proposals in respect of the exemption powers under section 38A and in conducting the related public consultation</p> <p>Drafting of proposed sections 38A(7) & (8) and 360(6) to (9)</p>	<p>Administration to take the follow up action set out in paragraph 7 of the minutes</p> <p>Administration to take the follow up action set out in paragraph 8(b) of the minutes</p>
015451 - 015542	Chairman	The Bills Committee to continue clause-by-clause examination at the next meeting	