

立法會
Legislative Council

LC Paper No. CB(1)721/03-04
(These minutes have been seen
by the Administration)

Ref: CB1/BC/18/02

Bills Committee on Companies (Amendment) Bill 2003

**Minutes of the ninth meeting
held on Thursday, 18 December 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
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Hon Emily LAU Wai-hing, JP
- Members absent** : Dr Hon Eric LI Ka-cheung, GBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Henry WU King-cheong, BBS, 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 previous meetings

LC Paper No. CB(1)521/03-04 - Minutes of meeting on 27 November 2003

LC Paper No. CB(1)597/03-04 - Minutes of meeting on 9 December 2003

The minutes of the meetings held on 27 November and 9 December 2003 were confirmed.

II Meeting with the Administration

- | | |
|-----------------------------------|--|
| LC Paper No. CB(1)598/03-04 (01) | - Administration's paper on Securities and Futures Commission's statutory power to make rules and statutory duty to conduct consultation |
| LC Paper No. CB(1)603/03-04 (01) | - List of issues requiring follow-up actions by the Administration (Position as at 17 December 2003) |
| 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 continued the 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 at the last meeting, Dr Eric LI had raised concern that the Administration should not devolve the responsibility of making subsidiary legislation under section 38A and conducting related public consultation to the Securities and Futures Commission (SFC), which was not held accountable to the Legislative Council. Dr LI, who was absent from the meeting, informed the Bills Committee via the Clerk that he was not satisfied with the Administration's response provided in LC Paper No. CB(1)598/03-04(01). In view of Dr LI's concern, the Bills Committee agreed to deliberate the issue at a later meeting with the presence of Dr LI. The Chairman also suggested that the Administration discuss with Dr LI on his concern. The Administration agreed.

4. Members also requested the Administration and SFC to consider and provide information on the following matters -

Sections 38A and 342A

- (a) whether the current drafting of proposed sections 38A(1) and 38A(2) should be revised to make it clear that the condition that "the exemption will not prejudice the interest of the investing public" was a necessary condition on which SFC might grant exemption under the respective sections. Similar amendments to the provisions in proposed section 342A should also be considered;

Sections 39A, 39B, 342CA and 342CB

- (b) whether the offences under sections 39A(5) and 39B(6) were recordable offence;
- (c) whether non-compliance with the guidelines published by SFC under sections 39A(2) and 39B(3) was an offence;
- (d) whether the proposed scope of "every officer of a company who is in default shall be liable to a fine" under sections 39A(5) or 39B(6) was too wide;
- (e) whether certain reason(s) should be accepted as a defence against a charge under sections 39A and 39B;
- (f) whether the level of fine should be stated in sections 39A(5) and 39B(6); and
- (g) issues set out in paragraphs (b) to (f) above should also be considered in relation of proposed sections 342CA and 342CB.

5. Apart from issues set out in paragraphs 3 and 4, and the proposed Third and Twelfth Schedules, and the relevant consequential and other amendments in Schedule 5 of the Bill, the Bills Committee finished clause-by-clause examination of other provisions in the Bill relating to prospectuses and raised no objection to them.

III Any other business

Date of next meeting

6. Members noted that the next meeting would be held on Thursday, 8 January 2004 at 10:45 am. The Bills Committee would continue the clause-by-clause examination of Schedule 1 of the Bill and related consequential amendments in Schedule 5 of the Bill at the next meeting.

7. There being no other business, the meeting ended at 1:05 pm.

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

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

**9th meeting on Thursday, 18 December 2003, at 10:45 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|---|---|--|
| 000000 - 000535 | Chairman | Confirmation of minutes of meeting on 27 November and 9 December 2003 Welcoming and introductory remarks | |
| 000536 - 001122 | Chairman Mr SIN Chung-kai Ms Emily LAU Mr CHAN Kam-lam | <u>Proposed section 38A</u> Administration's response to the question raised by Dr Hon Eric LI at the meeting on 9 December 2003 <i>[CB(1)598/03-04 (01)]</i> | Administration to take the follow up action set out in paragraph 3 of the minutes |
| 001123 - 003147 | Chairman Administration Mr Albert HO Mr SIN Chung-kai Securities and Futures Commission (SFC) Ms Emily LAU | The Bills Committee continued the clause-by-clause examination starting from clause 3 of Schedule 1 of the Bill <u>Clause 3 (Exemption of certain persons and prospectuses from compliance with certain requirements)</u> Drafting of proposed sections 38A(1) and 38A(2) | Administration to take the follow up action set out in paragraph 4(a) of the minutes |
| 003148 - 003525 | Chairman Administration | On members' concern raised at the last meeting about the consistency in drafting of new sections 38A(7) to (8) and 360(7) to (8), the Administration explained that the word "issue" was used for "notice" under sections 38A(7) to (8), while the word "make" was used for "order" under sections 360(7) to (8). | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|--|---|---|
| 003526 - 003839 | Chairman ALA7 Administration | Drafting of proposed section 38A(8)(b) | Administration would move Committee Stage amendment (CSA) to replace the word "published" by "issued" under section 38A(8)(b) |
| 003840 - 003945 | Chairman ALA7 | Drafting of proposed section 38A(6) | Administration would move CSA to remove ", suspended or withdrawn" from section 38A(6) |
| 003946 - 005150 | Chairman Ms Emily LAU Administration | <p>Concern was raised over the role of the Secretary for Financial Services and the Treasury (SFST) in the negative vetting arrangement for legislative proposals made by SFC under proposed section 38A. The Administration advised that subsidiary legislation made under 38A would be confined to technical matters only, and no policy matters would be involved.</p> <p>The Administration also advised that under the present regulatory structure for the securities and the futures market, SFC had no legal obligation to notify or consult the Financial Secretary or SFST on SFC's exercise of statutory powers unless such was required by law.</p> <p>Bills Committee agreed that the issues relating to the role of the Administration in making legislative proposals under section 38A should be revisited later together with Dr Eric LI's concerns.</p> | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------------------|---|--|-----------------|
| 003946 - 005150 (Cont'd) | | Members recalled that Mr Henry WU had raised concern that the discretionary power conferred on SFC under new section 38A(9) not to publish a draft of the proposed notice or order for public consultation was too wide. In response to the Chairman, members present did not raise query on this subsection. | |
| 005151 - 005347 | Chairman Mr Albert HO | <u>Clause 4 (Section added)</u> Members noted that the Administration had proposed CSA to delete the proposed section 38AA under clause 4 of the Bill. | |
| 005348 - 010430 | Chairman Administration ALA7 Ms Emily LAU SFC | <u>Clause 5 (Advertisements concerning prospectuses) and 19th Schedule</u> Briefing by the Administration on the proposed expanded range of extracts from or abridged versions of prospectus which might be lawfully published by way of advertisements under proposed section 38B and 19 th Schedule Briefing by SFC on similar arrangements in other jurisdictions | |
| 010431 - 010559 | Chairman Administration Ms Emily LAU | <u>Clause 6 (Section added)</u> Proposed section 38BA | |
| 010600 - 011317 | Chairman Administration ALA7 Mr Albert HO SFC | <u>Clause 7 (Registration of prospectus)</u> Proposed section 38D and related CSAs | |
| 011318 - 013906 | Chairman Administration ALA7 SFC Ms Emily LAU Mr Albert HO | <u>Clause 8 (Sections added)</u> Proposed sections 39A, 39B and 39C, and 20 th and 21 st Schedules | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------------------|------------------------------------|---|--|
| 011318 - 013906 (Cont'd) | | <p>Proposed mechanism in Hong Kong for amending prospectus consisting of one document under section 39A, and its comparison with the mechanism adopted in Australia</p> <p>SFC explained that unlike the arrangement in Hong Kong, there was no pre-vetting of prospectuses by the regulatory authority in Australia. The Australian model under which there were specific provisions on the detailed arrangements to deal with the consequences of material deficiencies to safeguard investors' interest was thus not applicable to the Hong Kong situation.</p> <p>SFC affirmed that SFC could safeguard investors' interest through the mechanism for pre-vetting of amendments to prospectus, e.g. SFC might impose conditions in its authorization to oblige the issuer to allow investors to withdraw their applications for shares or to return the shares obtained.</p> <p>Offences under sections 39A(5) and 39B(6)</p> | <p>Administration would review the mechanism at Phase III of the review on the regulatory framework for offers of shares and debentures</p> <p>Administration to take the follow up action set out in paragraphs 4(b) to 4(f) of the minutes</p> |
| 013907 - 014154 | Chairman ALA7 Administration | <p><u>Clause 9 (Civil liability for misstatements in prospectus)</u></p> <p>Proposed section 40 and 22nd Schedule</p> | |
| 014155 - 014212 | Chairman ALA7 | <p><u>Clause 10 (Criminal liability for misstatements in prospectus)</u></p> <p>Proposed section 40A</p> | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|--|--|--|
| 014213 - 014248 | Chairman ALA7 | <u>Clause 11 (Interpretation of provisions relating to prospectuses)</u> Proposed section 41A | |
| 014249 - 014416 | Chairman ALA7 | <u>Clause 12 (Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar)</u> Proposed section 43 and related CSAs | |
| 014417 - 014507 | Chairman ALA7 | <u>Clause 13 (Construction of references to offering shares or debentures to the public)</u> Proposed section 48A and 17 th Schedule | |
| 014508 - 014748 | Chairman ALA7 Administration Mr Albert HO | <u>Clause 14 (Directors' duty to shareholders regarding prospectus or statement in lieu)</u> Proposed section 155C | |
| 014749 - 015108 | Chairman ALA7 Administration | <u>Clause 15 (Dating of prospectus and particulars to be contained therein)</u> Proposed section 342 | |
| 015109 - 015204 | Chairman ALA7 | <u>Clause 16 (Exemption of certain persons and prospectuses from compliance with certain requirements)</u> Proposed section 342A and related CSAs | Administration to take the follow up action set out in paragraph 4(a) of the minutes |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|---|---|---|
| 015205 - 015516 | Chairman ALA7 Mr CHAN Kam-lam Mr Albert HO Administration | <u>Clause 17 (Section added)</u> Proposed section 342AB and related CSAs to delete this section <u>Clause 16 (Exemption of certain persons and prospectuses from compliance with certain requirements)</u> Drafting of proposed sections 342A(6) and 342A(8)(b) | Similar to section 38A, the Administration would move CSAs remove ", suspended or withdrawn" from section 342A(6), and to replace the word "published" by "issued" under section 342A(8)(b) |
| 015517 - 015623 | Chairman ALA7 | <u>Clause 19 (Registration of prospectus)</u> Proposed section 342C | |
| 015624 - 015749 | Chairman ALA7 | <u>Clause 20 (Sections added)</u> Proposed sections 342CA, 342CB, 342CC and related CSAs | Administration to take the follow-up action set out in paragraph 4(g) of the minutes Administration would also move CSA to amend section 342CC for consistency in drafting |
| 015750 - 020000 | Chairman ALA7 Ms Emily LAU Administration | <u>Clause 21 (Penalty for contravention of sections 342 to 342C)</u> Proposed section 342D and related CSAs Discrepancy in related penalty between companies registered in Hong Kong and overseas companies. As the matter fell outside the scope of the Bill, the Bills Committee agreed not to deal with this matter. | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|--|---|-----------------|
| 020001 - 020014 | Chairman | <u>Clause 22 (Civil liability for misstatements in prospectus)</u> Proposed section 342E | |
| 020015 - 020203 | Chairman Mr Albert HO Administration SFC | <u>Clause 23 (Interpretation of provisions as to prospectuses)</u> Proposed section 343 | |
| 020204 - 020228 | Chairman ALA7 | <u>Clause 24 (Power to amend requirements as to accounts, Schedules, tables, forms and fees)</u> Proposed section 360 | |
| 020229 - 020347 | Chairman ALA7 Mr Albert HO | The Bills Committee had scrutinized paragraph 3 of 3 rd Schedule, and proposed 17 th , 18 th , 19 th , 20 th , 21 st and 22 nd Schedules Mr Albert HO would follow up with the Administration in regard to his concern about the scope of "qualifying person" under section 8 of Part 1 of 17 th Schedule. | |
| 020348 - 021213 | Chairman Ms Emily LAU Mr Albert HO Administration ALA7 | Date of next meeting and schedule of subsequent meetings The Bills Committee to continue clause-by-clause examination of 3 rd and 12 th Schedules and the consequential and other amendments in Schedule 5 of the Bill, and to follow up the outstanding issues at the next meeting. | |