

Bills Committee on Companies (Amendment) Bill 2003**List of issues requiring follow-up actions by the Administration
(position as at 28 January 2004)****General**

Date of meeting	Issue	Outcome
11 September 2003	To provide information on the up-to-date position of those issues which the Administration had undertaken to further examine in view of the concerns raised by the Bills Committee on Companies (Amendment) Bill 2002	LC Paper No. CB(1)75/03-04 (01) <i>(issued on 15 October and 14 November 2003.)</i>
30 October 2003	As regards the vagueness of the scope of coverage of the expressions "body corporate" and "corporation" in the existing Companies Ordinance (the Ordinance) when read together with section 103(3)(a)(ii) of the Securities and Futures Ordinance, the Bills Committee and the Administration agreed not to tackle the issue in the context of the Bill, but make a remark at the resumption of the Second Reading debate of the Bill that the Administration would examine the issue 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.	To be reflected in the speech of the Administration at the resumption of the Second Reading debate of the Bill.

Schedule 1 of the BillProposed amendments to section 2(1)

Date of meeting	Issue	Outcome
17 October 2003	To consider whether the word "company" should be used in the new definition of "prospectus" in section 2 of the Ordinance, and in this connection, whether there is a need to modify the existing definition of "company" in the Ordinance	At the meeting on 30 October 2003, the Administration confirmed that the current drafting of the definition of "prospectus" was sufficiently clear in reflecting the intended scope of application of the provision on prospectuses.

Schedule 1 of the Bill (Cont'd)

Proposed new sections 38A, 342A and 360(6) - (9)

Date of meeting	Issue	Outcome
2 October 2003	To consider whether the words " <i>as it considers appropriate</i> " should be removed from the proposed section 38A(6) for the purpose of ensuring transparency of the operation the Securities and Futures Commission (SFC)	LC Paper No. CB(1)217/03-04 (02) <i>(issued on 31 October and 4 November 2003)</i>
2 October 2003	To consider the appropriate manner in which the exemptions granted under proposed section 38A would be published to enhance transparency	LC Paper No. CB(1)217/03-04 (02) <i>(issued on 31 October and 4 November 2003)</i>
17 October 2003	To consider whether the exemption and amendment powers of the SFC under new sections 38A(2) and 38A(5) should be put on the same footing as SFC's powers of amendments under new sections 360(6) - (9), and thus should be subject to the same public consultation procedures before the relevant order of exemptions/amendments is published in the Gazette	LC Paper No. CB(1)217/03-04 (02) <i>(issued on 31 October and 4 November 2003)</i> Committee Stage amendments (CSAs) will be introduced by the Administration LC Paper No. CB(1)387/03-04 (03) <i>(issued on 21 November 2003)</i>
17 October 2003	To provide a comparison of the exemption and amendment powers of SFC under proposed sections 38A and 360 and the corresponding checks and balances under the prospectus regulatory regime (with the proposed amendments in the Bill) with the equivalent/corresponding provisions of overseas jurisdictions	LC Paper No. CB(1)84/03-04 (06) <i>(issued on 23 and 28 October 2003)</i> LC Paper No. CB(1)217/03-04 (02) <i>(issued on 31 October and 4 November 2003)</i>
9 December 2003	To consider, with reference to the United Kingdom system, whether it should be the Administration, instead of SFC, to make subsidiary legislation under proposed section 38A and to conduct prior consultation on the draft legislation	LC Paper No. CB(1)598/03-04(01) <i>(issued on 16 and 17 December 2003)</i>

Schedule 1 of the Bill (Cont'd)

Proposed new sections 38A, 342A and 360(6) - (9) (Cont'd)

Date of meeting	Issue	Outcome
9 December 2003	To consider: (i) 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 (ii) 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(7) to (8) for consistency in drafting.	CSAs will be introduced by the Administration LC Paper No. CB(1)698/03-04 (01) <i>(issued on 5 and 7 January 2004)</i> At the meeting on 18 December 2003, the Administration explained that the word "issued" was used for "notice" under sections 38A(7) to (8), while the word "made" was used for "order" under sections 360(7) to (8)
18 December 2003	To revise the drafting of proposed sections 38A(1) and 38A(2) to make it clear that the condition that "exemption will not prejudice the interest of the investing public" is a necessary condition on which SFC might grant exemption under the respective sections. Similar amendments to the provisions in proposed section 342A are also required.	CSAs will be introduced by the Administration LC Paper No. CB(1)698/03-04 (02)) <i>issued on 5 January 2004)</i>

Schedule 1 of the Bill (Cont'd)

Proposed new sections 38AA and 342AB

Date of meeting	Issue	Outcome
17 October 2003	<p>To review proposed new sections 38AA and 342AB in view of the following concerns of the Bills Committee -</p> <ul style="list-style-type: none"><li data-bbox="440 510 1101 651">(i) whether there is any overlap between these proposed new sections and the existing section 41(2) and if so, the appropriate manner to deal with the overlap;<li data-bbox="440 674 1101 887">(ii) how the proposed sections are compared with those of other jurisdictions; and if the practices/approaches adopted by other jurisdictions are found to be different, why an approach similar to that of Singapore is adopted;<li data-bbox="440 909 1101 1088">(iii) whether the current drafting of new sections 38AA(4) and 342AB(4) is appropriate, particularly in regard to the intended scope of persons to be regulated under the new provisions; and<li data-bbox="440 1111 1101 1352">(iv) whether the current drafting of new sections 38AA(1) and 342AB(1) is sufficient to achieve the intended regulatory objective if under the current drafting of the provisions, a sale or offer for sale of shares in or debentures of a company made without any documentation is not subject to these sections.	<p>LC Paper No. CB(1)292/03-04 (02) <i>(issued on 10 and 12 November 2003)</i></p> <p>CSAs will be introduced by the Administration to take out proposed sections 38AA and 342AB from the Bill</p> <p>LC Paper No. CB(1)387/03-04 (03) <i>(issued on 21 November 2003)</i></p>

Schedule 1 of the Bill (Cont'd)

Proposed deletion of sections 38D(3)(b)(i) and (ii) and 342C(3)(b)(i) and (ii) and proposed addition of sections 38D(3A) and 342C(3A)

Date of meeting	Issue	Outcome
17 October 2003	<p>To review the above proposed amendments in view of the following concerns of the Bills Committee -</p> <ul style="list-style-type: none"> (i) whether the duration of the inspection period (i.e. not less than 14 days from the date of publication of the prospectus) and the new arrangement that the documents will be available for inspection only at the company's registered office in Hong Kong, instead of at the Companies Registry (CR) as the case at present, can achieve the policy objective of enhancing information disclosure for better investor protection; (ii) whether the scope of information available for public inspection is appropriate and whether there are sufficient safeguards for personal data privacy; (iii) whether under the proposed new arrangement, the company concerned can impose a charge on a request for inspection of the documents concerned; (iv) whether under the proposed new arrangement, members of the public are allowed to obtain copies of the documents concerned, and if so, whether there is a need to specify in the legislation how the company concerned should charge such copies; and (v) whether CR can maintain records of the prospectus issued together with the material contracts stated in the prospectus etc. for public inspection throughout the whole life of the financial product concerned; if the answer to this question is in the affirmative, what public inspection arrangements the Administration would propose to ensure that the services are user-friendly and provided at reasonable charges, and will not have undue resource implications on CR. 	<p>LC Paper No. CB(1)387/03-04(04) (issued on 21 and 26 November 2003 respectively)</p> <p>CSAs will be introduced by the Administration to remove relevant provisions of clauses 7, 19, 25 and 26 of Schedule 1 of the Bill</p> <p>LC Paper No. CB(1)387/03-04 (03) (issued on 21 November 2003)</p>

Schedule 1 of the Bill (Cont'd)

Proposed sections 39A, 39B, 342CA and 342CB

Date of meeting	Issue	Outcome
18 December 2003	<p>To review the following issues concerning offences relating to amendment of prospectuses -</p> <ul style="list-style-type: none"> (i) whether the offences under sections 39A(5) and 39B(6) are recordable offence; (ii) whether non-compliance with the guidelines published by SFC under sections 39A(2) and 39B(3) is an offence; (iii) 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) is too wide; (iv) whether certain reason(s) should be accepted as a defence against a charge under sections 39A and 39B; (v) whether the level of fine should be stated in sections 39A(5) and 39B(6); and (vi) issues set out in paragraphs (i) to (v) above should also be considered in relation of proposed sections 342CA and 342CB. 	<p>LC Paper No. CB(1)698/03-04 (01) <i>(issued on 5 and 7 January 2004)</i></p>
8 January 2004	<p>To consider and provide information on the following matters concerning offences relating to amendment of prospectuses -</p> <ul style="list-style-type: none"> (i) the number of summonses issued and cases convicted, and the amount of fine imposed on prospectus-related offences which were liable to a fine at level 6 under 12th Schedule of the Bill in the past three years; (ii) whether the Hong Kong Police Force had kept the records of the convicted cases mentioned in paragraph (a) above; (iii) whether the drafting of proposed sections 39A(2), 39B(3), 342CA(2) and 342CB(3) should be revised to make it clear that a failure to comply with the guidelines published by SFC under these sections would not by itself render a person liable to any judicial or other proceedings; and (iv) whether the power of SFC to publish codes or guidelines under CO should be read in conjunction with the provisions under section 399 in SFO, and if so, how far section 399 in SFO applied to the provisions quoted in (c) above. 	<p>Administration to respond</p>

Schedule 1 of the Bill (Cont'd)

Proposed amendments to the Third Schedule

Date of meeting	Issue	Outcome
30 October 2003	To contact the Hong Kong Institute of Company Secretaries (HKICS) to see if the Institute is satisfied that the work being done by SFC and the Stock Exchange of Hong Kong (SEHK) to promote the use of plain language in prospectuses is adequate.	At the meeting on 13 November 2003, the Administration reported that HKICS had positive response on SFC's and SEHK's work to promote the use of plain language in prospectuses

Proposed new Seventeenth Schedule

Date of meeting	Issue	Outcome
30 October 2003	To provide further information on the following - (i) whether the market has been consulted on the scope of "qualifying person", and if so, what the views of the market are; (ii) the equivalent/corresponding provisions in the United States; and (iii) regulatory experience in overseas jurisdictions, including the regulatory problems encountered in administering similar exemptions.	LC Paper No. CB(1)292/03-04 (03) <i>(issued on 10 and 12 November 2003)</i>
8 January 2004	To consult Ms Alice CHAN, Lecturer, Department of Professional Legal Education, The University of Hong Kong, on the proposed CSAs to section 7 of Part I of the proposed 17 th Schedule, and report to the Bills Committee if Ms CHAN has any comments on the proposed CSAs.	Administration to respond

Schedule 4 of the Bill

Proposed new section 152FA

Date of meeting	Issue	Outcome
2 October 2003	To consider whether provisions should be added to make it clear that the requirement to disclose information or documents according to an order for inspection made by the court under the proposed section 152FA should override any contractual agreement on non-disclosure, and to exempt the specified corporation concerned from the contractual or common law liabilities arising from the disclosure	Reply awaited

Council Business Division 1
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