

Bills Committee on Companies (Amendment) Bill 2003

List of issues requiring follow-up actions by the Administration (position as at 28 October 2003)

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	English version of the Administration's response issued vide LC Paper No. CB(1)75/03-04 on 15.10.2003

Schedule 1 of the Bill

Proposed 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 Companies Ordinance (the Ordinance), and in this connection, whether there is a need to modify the existing definition of "company" in the Ordinance	Reply awaited

Proposed new sections 38A 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)	Reply awaited
2 October 2003	To consider the appropriate manner in which the exemptions granted under proposed section 38A would be published to enhance transparency	Reply awaited
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	Reply awaited

Schedule 1 of the Bill (Cont'd)

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

Date of meeting	Issue	Outcome
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	Reply awaited

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">(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;(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;(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(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.	Reply awaited

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"><li data-bbox="432 562 1110 936">(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;<li data-bbox="432 958 1110 1108">(ii) whether the scope of information available for public inspection is appropriate and whether there are sufficient safeguards for personal data privacy;<li data-bbox="432 1131 1110 1281">(iii) whether under the proposed new arrangement, the company concerned can impose a charge on a request for inspection of the documents concerned;<li data-bbox="432 1303 1110 1556">(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<li data-bbox="432 1579 1110 1998">(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.	Reply awaited

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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