

For discussion
on 27 November 2003

Paper No. CA1-6/03

Bills Committee on Companies (Amendment) Bill 2003

**Schedule 1 – Amendments to the Companies Ordinance
relating to prospectus**

Registration of Material Contracts

BACKGROUND

At the meeting on 17 October 2003, the Bills Committee considered clauses 7 and 19 concerning a new requirement for material contracts to be displayed for not less than 14 days from the date of publication of the prospectus at the company's registered office. The Administration and the Securities and Futures Commission (SFC) were asked to review the proposed amendments in view of the following concerns expressed by Members –

- (a) 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 made available for inspection only at the company's registered office in Hong Kong, instead of at the Companies Registry (CR) as in the case at present, can achieve the policy objective of enhancing information disclosure for better investor protection;
- (b) whether the scope of information available for public inspection is appropriate and whether there are sufficient safeguards for personal data privacy;
- (c) whether under the proposed new arrangement, the company concerned can impose a charge on a request for inspection of the documents concerned;
- (d) 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

- (e) whether CR can maintain records of the prospectus issued together with the material contracts stated in the prospectus, etc. for public inspection throughout the entire life of the financial product concerned; if so, 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.

2. The Privacy Commissioner for Personal Data, in his letter dated 14 October 2003 to the Bills Committee, expressed his concern similar to that set out in paragraph 1(b) above. He stated that clauses 7 and 19 (the proposed new sections 38D and 342C), obliging a company to make available for public inspection material contracts at its registered office in Hong Kong, provided an additional channel for inspection akin to a public register. He therefore considered that the provision of a purpose statement specifying the use of the personal data in the Bill would be appropriate and effective to quell uncertainty over its permitted use.

CONSULTATION

3. The proposal for replacing the requirement for registering material contracts with CR with a new arrangement of displaying such contracts at the company's registered office in Hong Kong did not receive any objection during the consultation conducted in March 2003¹. Since Members' suggestion of lengthening the inspection period represents material departure from the original proposal exposed to the public, we have written to all consultees in the March consultation exercise to seek their views specifically on this subject by 11 November 2003. The content of the letter is at Annex. We have received 21 submissions, with the last batch of comments arriving on 19 November 2003. The views and comments of the respondents are summarised in paragraphs 4 to 7 below.

¹ The Financial Services and the Treasury Bureau and SFC consulted the public in March 2003 on proposals to amend the Companies Ordinance for streamlining the procedures for registration and issue of prospectuses.

(A) Length of inspection period

4. About half of the respondents support lengthening the inspection period. Their suggestions range from the period during which the offer is made to the entire life of the financial product concerned. Other respondents believe that the 14-day inspection period should be sufficient.

5. Some respondents are of the view that removing the requirement of registering material contracts with CR will not significantly reduce compliance costs, in particular if companies are required to make available for public inspection such contracts at their registered offices for a long period of time. One respondent also pointed out the difficulty involved in designing a uniform system for keeping the material contracts for public inspection for all issuers to follow. Another respondent points out that CR, where all public records are filed, should capture all the public record information electronically and make these available to the public on the Internet.

6. In terms of investor protection, many respondents consider the current arrangement whereby the public may inspect and make copies of material contracts at CR at anytime is effective in ensuring ready access to such information.

7. From the angle of user-friendliness, a respondent considers that CR provides a centralised registry to facilitate a “one-stop” search for investors when information about more than one issuer is required.

(B) Charging for inspecting and copying material contracts

8. Most respondents consider that inspection of material contracts at the registered offices of the companies should be free of charge, and that the companies may charge a reasonable fee for copying such contracts.

WAY FORWARD

9. In light of the comments received as set out in paragraphs 4 to 8 above, we would propose to maintain the current arrangement of registering material contracts with CR by removing relevant provisions of clauses 7, 9, 25 and 26 of the Bill. The material contracts would continue to be registered with CR which would, as at present, keep such contracts

for public inspection and, where necessary, for the public to make copies. In putting forward this proposal, we have given careful consideration to the compliance costs to be borne by issuers, should the inspection period be lengthened, and the need for ensuring easy access to the material contracts by the investing public. We also note that upon the completion of the Integrated Companies Registry Information System which would enable investors to browse registered documents on the Internet round-the-clock, investors would have easier access to material contracts registered with CR.

10. Should provisions of clauses 7, 19, 25 and 26 relating to the inspection of material contracts be removed as proposed in paragraph 9 above, the concern raised by the Privacy Commissioner for Personal Data at paragraph 2 above would not arise.

Financial Services and the Treasury Bureau
Securities and Futures Commission
20 November 2003

2528 9493

2861 1494

G6/123/4C(2003) Pt. 14

24 October 2003

Name and addresses

Dear

**Consultation on proposed amendments to the
Companies Ordinance to facilitate offers of shares and debentures**

We consulted the public in March 2003 on proposals to amend the Companies Ordinance for streamlining the procedures for registration and issue of prospectuses, as Phase II of our three-phased approach to overhaul the existing regulatory framework for offers of investment.

The objective of this legislative amendment exercise is to facilitate offers of shares and debentures by, amongst others, lowering the associated issuance costs without compromising investor protection. The consultation closed on 31 March 2003 and market views received during the consultation exercise have been incorporated into the Companies (Amendment) Bill 2003 (the Bill), where appropriate. The Bill was introduced into the Legislative Council on 25 June 2003 and is currently being examined by the Bills Committee.

One of the proposals in our consultation document issued in March was to replace the existing requirement in sections 38D and 342C with respect to registration of material contracts, together with the prospectus, with a new requirement that such material contracts be on display for not less than 14 days from the date of publication of the prospectus at the company's registered office or, in case the company does not have a place of business in Hong Kong, other places in Hong Kong as specified by the Securities and Futures Commission. The purpose is to facilitate issuers by removing the requirement of registering "material contracts" with the Registrar of Companies without denying

public access to the material contracts. As this particular proposal has not received any objection during public consultation, it has been included in clauses 7 and 19 of the finalised Bill. Relevant extract of the Bill is attached for your easy reference.

When examining the Bill on 17 October 2003, some Members of the Bills Committee of the Legislative Council have expressed concerns on whether the 14-day inspection period is sufficient and suggested that the period be lengthened to, say, cover the whole period during which the offer is made or the entire life of the financial product concerned. There is also a suggestion that the inspection period should last for at least a few years. In meeting these suggestions, Members noted that under the existing arrangement, the public could access the material contracts registered with the Registrar of Companies anytime and might make copies of the documents at a reasonable cost. They considered that our proposal in the Bill might limit public access to such documents by introducing the 14-day limit to the inspection period, thereby compromising information disclosure and investor protection. *In this connection, we would like to seek your views on whether the inspection period should be lengthened, and if so, how long the period should last for.*

You may wish to note that should the proposed inspection period be lengthened, the statutory safeguards to ensure that the public can access the material contracts and, where necessary, make copies at a reasonable cost provided for in the new section 342C(10) will apply during the entire inspection period.

As a related issue, some Members of the Bills Committee have expressed concerns on whether under the proposed arrangement, the company concerned can impose a charge on a request for inspection of the material contracts. It has also been suggested that consideration be given to requiring companies to allow public inspection of the material contracts free of charge. *In this connection, we would like to seek your views on whether the public should be allowed to inspect the material contracts kept by the company concerned free of charge.*

As the suggestions represent material departure from the original proposal exposed to the public in March 2003 and may impact on compliance cost and investor protection, we would like to hear your views before we revert to the Bills Committee on whether clauses 7 and

19 requires modifications. Since the Bills Committee is working against a very tight timetable, we should be grateful if you would let us have your response by **11 November 2003**.

The Bills Committee is in the process of examining the Bill, and there may be other new issues arising from the deliberation of the Bills Committee. Depending on the discussion of the Bills Committee, we may have to seek your views in the next few weeks on other major issues which would likely have significant impact on the market users and investors.

Thank you for your attention.

Yours sincerely,

(Mrs Dorothy Ma)
for Secretary for Financial Services and
the Treasury

Encl.

c.c. SFC (Attn.: Mr Ashley Alder)
Clerk to Bills Committee (Attn.: Ms Anita Sit)

7. 招股章程的註冊

第38D條現予修訂——

- (a) 廢除第(3)(b)(i)及(ii)款；
- (b) 加入——

“(3A) 如招股章程第(3)(b)款所述者，則——

- (a) 附表3第17段規定須在該招股章程內述明的任何合約的一份文本；
- (b) 在合約並非以書面記錄的情況下，一份詳列該合約的細則的備忘錄；或
- (c) (如招股章程根據第38A條獲豁免而無需符合第38(1)條的規定) 在規避該項豁免的任何條件中為施行本段而指明的任何合約的一份文本。

須自該招股章程刊登日期起，於有關公司在香港的註冊辦事處供公眾人士在正常辦公時間內查閱，為期不少於14天。”；

(c) 在第(4)款中——

- (i) 廢除“(3)(b)(i)款提述招股章程內規定須註明或隨附”而代以“(3A)款有提述該款規定須供查閱的”；
- (ii) 廢除在“為按”之後的所有字句而代以“第(10)款所指的訂明方式核證為正確譯本。”；

(d) 加入——

“(10) 第(4)款所述的譯本——

- (a) 須由該譯本的製備者核證為正確譯本；及
- (b) 的製備者如已由第(i)或(ii)節所述的適當的人核證為他相信是有足夠能力將有關文件譯成英文或中文(視屬何情況而定)，則該譯本須當作已按訂明方式核證——

(i) 如該譯本在香港以外製備——

- (A) 製備該譯本所在的地方的公證人；
- (B) 監察委員會指明的其他人；或
- (C) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人；

(ii) 如該譯本在香港製備——

- (A) 香港的公證人；
- (B) 香港高等法院律師；
- (C) 監察委員會指明的其他人；或
- (D) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人。

(11) 除第(12)款另有規定外，凡某公司為遵守第(3A)款須提供文件供公眾人士查閱，該公司須在第(3A)款指明的限內，在——

- (a) 有任何查閱該文件的人要求時；及
- (b) 該公司提供該文件的全部或部分內容的副本所需的合理開支獲支付後，

提供該副本。

(12) 如任何文件——

- (a) 在電腦互聯網上的某個輕易可達的網頁上以令該文件能夠輕易列印的形式；及

(b) 於第(3A)款指明的限內，

供公眾人士查閱，則有關公司無需遵守第(11)款。

(13) 根據第(10)(b)(i)(C)或(ii)(D)款刊登的公告並非附屬法例。

(14) 如任何公司沒有遵守第(11)款，該公司以及其每名失責高級人員均可處罰款。”。

7. Registration of prospectus

Section 38D is amended——

- (a) by repealing subsection (3)(b)(i) and (ii);
- (b) by adding——

“(3A) In the case of a prospectus mentioned in subsection (3)(b)——

- (a) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus;
- (b) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; or
- (c) in the case of a prospectus exempted under section 38A from compliance with the requirements of section 38(1), a copy of any contract specified for the purposes of this paragraph in any of the conditions to which the exemption is subject,

shall be available for inspection by the public, during normal business hours, for not less than 14 days from the date of publication of the prospectus, at the company's registered office in Hong Kong.”;

(c) in subsection (4)——

- (i) by repealing “subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus” and substituting “subsection (3A) to the copy of a contract required thereby to be available for inspection”;
- (ii) by repealing everything after “prescribed manner” and substituting “under subsection (10) to be a correct translation.”;

(d) by adding——

“(10) A translation mentioned in subsection (4) shall be——

- (a) certified by the person making the translation as a correct translation; and
- (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say——

(i) if the translation be made outside Hong Kong——

- (A) a notary public in the place where the translation is made;
- (B) such other person as may be specified by the Commission; or
- (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;

(ii) if the translation be made in Hong Kong——

- (A) a notary public in Hong Kong;
- (B) a solicitor of the High Court of Hong Kong;
- (C) such other person as may be specified by the Commission; or
- (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph.

(11) Subject to subsection (12), where a company is required to make a document available for inspection by the public in compliance with subsection (3A), it shall, during the period specified in subsection (3A), provide a copy of all or any part of the document——

- (a) on the request of any person inspecting the document; and
- (b) on payment of the reasonable expenses of the company in providing the copy.

(12) A company is not required to comply with subsection (11) in the case of any document available for inspection by the public——

- (a) on the Internet on a readily accessible web page in a format which enables the document to be readily printed; and
- (b) during the period specified in subsection (3A).

(13) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

(14) If any company fails to comply with subsection (11), the company and every officer of the company who is in default shall be liable to a fine.”。

342C 條現予修訂——

- (a) 在第(1)款中，在“認購”之後加入“或購買”；
 (b) 在第(2)(a)款中，在“負責”之後加入“，如該招股章程獲得或將會獲得認可交易所依據根據《證券及期貨條例》(第571章)第25條作出的轉移令而授權發出，則該明瞭披露委員會、認可交易所及處長對該招股章程的內容概不負責”；
 (c) 廢除第(3)(b)(i)及(ii)條；
 (d) 加入——

“(3A) 如招股章程屬第(3)(b)款所述者，則——

- (a) 附表3第17段規定須在該招股章程內述明任何合約的一份文本；
 (b) (在合約並非以書面記錄的情況下)一份詳列該合約的細則的備忘錄；或
 (c) (如招股章程根據第342A條獲豁免而無符合第342(1)條的規定)在規限該項豁免的任何條件中進行本段而指明的任何合約的一份文本。

須自該招股章程刊登日期起，於下述地點供公眾人士在正常辦公時間內查閱，為期不少於14天——

- (d) 除(e)段另有規定外，有關公司在香港的主要營業地點；
 (e) (如有關公司在香港並無主要營業地點)監察委員會在個別個案中指明的一個或多於一個在香港的地點。”；

(e) 在第(4)款中——

- (i) 廢除“(3)(b)(i)款應述招股章程內規定須註明或連同”而代以“(3A)款有提及該款規定須供查閱的”；
 (ii) 廢除在“均按”之後的所有字句而代以“第(9)款所指的訂明方式核證為正確譯本。”；

(f) 加入——

“(9) 第(4)款所述的譯本——

- (a) 須由該譯本的製備者核證為正確譯本；及
 (b) 的製備者如已由第(i)或(ii)節所述的適當的人核證為他相信是有足夠能力將有關文件譯成英文或中文(視屬何情況而定)，則該譯本須當作已按訂明方式核證——
 (i) 如該譯本在香港以外製備——
 (A) 製備該譯本所在的地方的公證人；
 (B) 監察委員會指明的其他人；或
 (C) 屬於監察委員會為施行本段而在憲報刊登的公告指明的某類別人士的其他人；
 (ii) 如該譯本在香港製備——
 (A) 香港的公證人；
 (B) 香港高等法院律師；
 (C) 監察委員會指明的其他人；或
 (D) 屬於監察委員會為施行本段而在憲報刊登的公告指明的某類別人士的其他人。

(10) 除第(11)款另有規定外，凡某公司為遵守第(3A)款須提供文件供公眾人士查閱，則該公司須在第(3A)款指明的限內，在——

- (a) 有任何查閱該文件的人要求時；及
 (b) 該公司提供該文件的全部或部分內容的副本所需的合理開支獲支付後，

提供該副本。

(11) 如任何文件——

- (a) 在有關互聯網上的某個輕易可達的網頁上以令該文件能夠輕易列印的形式；及
 (b) 於第(3A)款指明的限內，

供公眾人士查閱，則有關公司須遵守第(10)款。

(12) 根據第(9)(b)(i)(C)或(ii)(D)款刊登的公告並非開列法例。

(13) 如任何公司沒有遵守第(10)款，該公司以及其每名失責高級人員均可處罰款。”。

19. Registration of prospectus—

Section 342C is amended—

- (a) in subsection (1), by adding “or purchase” after “subscription”;
 (b) in subsection (2)(a), by adding “or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus” after “prospectus”;
 (c) by repealing subsection (3)(b)(i) and (ii);
 (d) by adding—

“(3A) In the case of a prospectus mentioned in subsection (3)(b)—

- (a) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus;
 (b) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; or
 (c) in the case of a prospectus exempted under section 342A from compliance with the requirements of section 342(1), a copy of any contract specified for the purposes of this paragraph in any of the conditions to which the exemption is subject,

shall be available for inspection by the public, during normal business hours, for not less than 14 days from the date of publication of the prospectus, at—

- (d) subject to paragraph (e), the company's principal place of business in Hong Kong;
 (e) if the company does not have a principal place of business in Hong Kong, such place or places in Hong Kong as is or are specified by the Commission in the particular case.”;

(e) in subsection (4)—

- (i) by repealing “subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus” and substituting “subsection (3A) to the copy of a contract required thereby to be available for inspection”;
 (ii) by repealing everything after “prescribed manner” and substituting “under subsection (9) to be a correct translation.”;

(f) by adding—

“(9) A translation mentioned in subsection (4) shall be—

- (a) certified by the person making the translation as a correct translation; and
 (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say—

(i) if the translation be made outside Hong Kong—

- (A) a notary public in the place where the translation is made;
 (B) such other person as may be specified by the Commission; or
 (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;

(ii) if the translation be made in Hong Kong—

- (A) a notary public in Hong Kong;
 (B) a solicitor of the High Court of Hong Kong;
 (C) such other person as may be specified by the Commission; or
 (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph.

(10) Subject to subsection (11), where a company is required to make a document available for inspection by the public in compliance with subsection (3A), it shall, during the period specified in subsection (3A), provide a copy of all or any part of the document—

- (a) on the request of any person inspecting the document; and
 (b) on payment of the reasonable expenses of the company in providing the copy.

(11) A company is not required to comply with subsection (10) in the case of any document available for inspection by the public—

- (a) on the Internet on a readily accessible web page in a format which enables the document to be readily printed; and
 (b) during the period specified in subsection (3A).

(12) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

(13) If any company fails to comply with subsection (10), the company and every officer of the company who is in default shall be liable to a fine.”.