

By fax and by post (2528 3345)

Our Ref.: C/CO, M20111

29 May 2003

Mr. Esmond Lee
Principal Assistant Secretary (Financial Services) IV,
Financial Services and The Treasury Bureau,
Government of the HKSAR,
18/F., Admiralty Centre Tower 1,
18 Harcourt Road, Hong Kong.

Dear Esmond,

Companies (Amendment) Bill 2002

I refer to your request for comments on the proposed amendment to s161C.

We note that the discussion on the removal of the reference to shadow directors under s158 has gone on for some time at LegCo, and understand the considerations behind this proposal. However, if, having weighed up the arguments, LegCo's decision is to remove shadow directors from s158, there should be parallel consideration of dropping the term from s161B.

On the other hand, if the duty to report on shadow directors is retained in s161B, auditors will need the equivalent of s158. As regards your proposal to amend s161C, the concept we discussed which we think may be a practical solution to the issue was to impose a duty (in section 161C or somewhere else if more appropriate) on the company and its directors to keep an internal register of directors including shadow directors of the company and/or a record of loans, guarantees, etc. to such directors that are required to be disclosed under s161B. This should be provided as part of company records that are required by law to be maintained, i.e. a legal record, which should be open to access and inspection by the company's auditors.

Your proposed amendment to s161C as set out in your email of 23 May would not, on its own, adequately address our concern on the auditing issue.

Yours sincerely,

WINNIE C. W. CHEUNG
SENIOR DIRECTOR
PROFESSIONAL & TECHNICAL DEVELOPMENT
HONG KONG SOCIETY OF ACCOUNTANTS

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