BY FAX AND BY POST
(2869 6794)

Our Ref.: C/EPLM, M20183 5 June 2003

The Hon. Audrey Eu Yuet-mee
Chairman,
Bills Committee on Companies (Amendment) Bill 2002,
Legislative Council Secretariat
Legislative Council Building,
8 Jackson Road, Central, Hong Kong.

Dear Ms. Eu,

Companies (Amendment) Bill 2002

We refer to the letter of 24 April 2003 from the Financial Service Branch (FSB) in response to our letter dated 10 October 2002 to the Chairman of the Bills Committee on Companies (Amendment) Bill 2002, and would like to reiterate an issue raised in our original submission which we do not consider to have been adequately addressed in the responses from FSB.

Clause 63/section 161B – Particulars of relevant transaction

We do not agree with the FSB's response that the proposed new section 161B of the Companies Ordinance merely restates reporting requirements similar to those in the current provision. As a result of the extension of the prohibition on loans to directors, etc., under clause 58 of the Bills and related provisions, to cover quasi-loans and credit transactions, the scope of related disclosure requirements under s161B have also changed.

Currently, s161B provides that the accounts to be laid before a company in general meeting shall contain the particulars of every relevant loan (as defined) made by the company, e.g. the name of the borrower, the terms, the outstanding amount, any overdue amount, and the amount of any provision made in respect of failure or anticipated failure to repay. A relevant loan includes, e.g. a loan made to a director of the company, or a body corporate in which such a director held (jointly or severally or directly or indirectly) a controlling interest at any time during the financial year.

Under the new s161B, the scope of the disclosure requirements is to be extended to cover every relevant transaction, which is defined to include, e.g. a credit transaction entered into between a company and a director of the company, or a body corporate in which such a director at any time during the financial year held (jointly or severally or directly or indirectly) a controlling interest. Given that a company may, in the ordinary course of its business, have carried out numerous credit transactions during a financial year which fall within the
scope of the expanded s161B, the particulars of every such transaction, e.g. the name of the borrower, the terms, the outstanding amount, any overdue amount, and the amount of any provision made in respect of failure or anticipated failure to repay, will be required to be set out in the accounts to be laid before the company in a general meeting.

It is not uncommon for private companies, for example, to carry out transactions, in the normal course of business, with other companies in which a director of the former has a controlling interest. In view of the prevalence of credit transactions which are potentially subject to the disclosure requirements under the new s161B, therefore, the Society reiterates its view that the proposed disclosure requirements could be unduly onerous and in practice overload financial statements with details that would not be useful to most users.

It is suggested that, instead, disclosure requirements be adopted similar to those in the Hong Kong accounting standards, which are modelled on International Accounting Standards. Under the Hong Kong Statement of Standard Accounting Practice on Related
--- Party Disclosures (SSAP 2.120 – see extract attached) items of a similar nature may be disclosed in aggregate in order to avoid voluminous and unnecessarily detailed disclosures. For the purposes of the new s161B, for example, the company should be required to disclose only the total amount involved, the total opening balance and closing balance, and the total provision made in respect of failure or anticipated failure to repay, in respect of all the relevant transactions, rather than the details of each transaction that took place during the company's financial year, as proposed in clause 63.

We also note in this regard that, in relation to transactions entered into by an authorised financial institution which satisfy the criteria set out in subsection (5) of the new section 161B, including those subject to normal commercial terms, the accounts of the authorised financial institution, or the holding company of an authorised financial institution, as appropriate, need only disclose, in aggregate, the items specified in subsections (6) and (7) respectively.

We have written separately to you, in our letters of 28 March and 29 May 2003, on the proposals relating to shadow directors under sections 161B and 158 of the Companies Ordinance.

If you have any questions or comments on the above, please contact Mr. Peter Tisman, Deputy Director (Business & Practice) at 2287 7084, in the first instance.

Yours sincerely,

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

WCC/PMT/ay
Encl.

c.c. Secretary for Financial Services and the Treasury
(Attn: Mr. Edmond Lee) (Fax no.: 2528 3345)

Extract from Statement 2.120
Statement of Standard Accounting Practice
"Related Party Disclosures"

(Issued August 1997)

23. ***Items of a similar nature may be disclosed in aggregate except when separate disclosure is required by law or is necessary for an understanding of the effects of related party transactions on the financial statements of the reporting enterprise.***

24. The purpose of disclosing similar items in aggregate is to avoid unnecessarily voluminous disclosures. Dissimilar items are not disclosed in aggregate, for example, purchases or sales of goods are not aggregated with purchases or sales of fixed assets. Similarly, a significant transaction with a specific related party is not to be concealed within an aggregated disclosure.