

11 June 2003

Mr. Esmond Lee
Financial Services Branch
Financial Services and the Treasury Bureau
18/F., Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

Dear Esmond,

Companies (Amendment) Bill 2002

Thank you for your letter of 6 June, inviting HKAB's comments on the latest Committee Stage Amendments (CSAs) to the above Bill.

Under the CSAs, a line is drawn between listed companies and members of their groups on the one hand, and private companies which are not a member of a listed group on the other. The former is subject to the prohibitions in respect of quasi loans and credit transactions whereas the latter is not.

A difficulty potentially emerges here in that a counterparty to a quasi loan or credit transaction might not be aware and may have no means of knowing that a private company which is within a listed group is in fact within that listed group. This could arise, for example, where the shares in the private company are held by nominees or by an offshore company in circumstances where it is not possible to trace the ownership of the private company to the listed company concerned. Thus, the possibility exists of a counterparty to a quasi loan or credit transaction entering into a prohibited transaction without any means of knowing that the transaction is in fact prohibited.

Section 157I(2) as amended states that any guarantee or security in breach of Section 157H will be unenforceable. This would include a guarantee of a quasi loan or credit transaction. Section 157I(3) provides protection in the situation where the guarantee is not in favour of a director and the beneficiary of the guarantee or security was not aware of the circumstances giving rise to the breach of Section 157H. It seems equitable that in the case of quasi loans and credit transactions, the protection should be given even if the guarantee or security was given for the benefit of the director if the beneficiary of the guarantee or security can show that he was not aware that the company was a private company within a listed group.

Yours sincerely,

Rona Morgan
Secretary