

28 September 2002

The Hon. Audrey Eu  
Bills Committee Chairman  
Legislative Council

Dear Ms Eu

**Companies (Amendment) Bill**

I refer to your letter dated 7 August 2002 addressed to the Dean, Department of Accounting and Finance, Lingnan University. It has been passed to me for reply.

In principle I support the proposed amendments to the Companies Ordinance. I would like to comment on the following clauses:

Clause 2

I welcome a definition of \_manager\_ and \_shadow director\_ under section 2(1) of the Companies Ordinance (CO). But a person occupying a position under the immediate authority of the board of directors may not be called a \_manager\_.

Clause 4

In substance there are many one-man companies because the second member is usually a nominee; and guarantee companies with share capital are rare. I agree with this clause.

Clause 5

It does not seem that there is a need to provide for dissenting shareholders to apply to the court to cancel the alteration, when the resolution was passed by the majority. In appropriate circumstances, the dissenting shareholders may invoke section 168A.

Clause 9

Although section 23(1) is not clear, there are many cases which have already clarified the meaning of the section. The amendment has not added anything new to the existing law.

Clause 10

It does not seem that there is a need to provide for dissenting shareholders to apply to the court to cancel the alteration, when the resolution was passed by the majority. In

appropriate circumstances, the dissenting shareholders may invoke section 168A.

Clause 54

If the articles of a company provide for the appointment of an alternate director and the board of directors approve of the appointment, there is no reason why an alternate director so appointed shall be deemed to be the agent of the director who appoints him rendering the director vicariously liable for any tort committed by the alternate director. In any event, there is a need to clarify the meaning of the expression \_alternate director\_.

Clause 57

I have no objection to the proposal to remove a director by an ordinary resolution. But I do not think the proposed special notice serves any particular purpose. If it is considered that 14 days \_notice is not sufficient, the section could specify a longer notice, instead of calling for a special notice.

Clause 58

In Hong Kong, the term \_loan\_ is narrowly defined to mean an advance of money to be repaid in the future. Such a definition is inadequate to cover modern forms of credit. I agree that it should be extended to cover any credit transactions and quasi-loans.

Clause 66

I am in favour of clarifying the position regarding the purchase by a company of insurance against any liability to the company on behalf of its officers. The current position is unclear.

I hope that you will find the above comments useful. If you have any queries in respect of the above, please ring me on 26167333.

Yours sincerely,

Clement Shum  
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Lingnan University

CC Professor KH Chan, Head of Department of Accounting and Finance,  
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