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財經事務及庫務局
財經事務科
香港夏慤道十八號
海富中心第一座十八樓



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**FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION**
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[By Fax: 2877 5029]

23 November 2004

Ms Monna Lai
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Lai,

Companies (Amendment) Bill 2004

I refer to your letter dated 1 November 2004. After consulting the Hong Kong Institute of Certified Public Accountants and Department of Justice, we set out our responses to your observations on the Bill as follows -

(A) Section 1 of the 23rd Schedule

2. The policy intention is that the interpretation of the terms “shares” and “undertakings” should not only cover those provisions specified under the proposed section 2B(3) of the Ordinance but also the proposed 23rd Schedule to the Ordinance. In this regard, we will consider further the need for a committee stage amendment (CSA) to delete the rider qualifying the scope of application in relation to these two terms.

(B) Section 2 of the 23rd Schedule and Section 2(4) of the Ordinance

3. The term “voting power” is referred to in the existing section 2(4) of the Ordinance. While the Ordinance does not have an express definition for the term, its meaning is widely understood and we are not aware of any problems arising from its interpretation. Moreover, section 2(6) of the Ordinance provides for the circumstances in which the power in question should or should not be treated as exercisable by the parent company in question. As such, we see no apparent need to add in the Ordinance a definition for this term.

4. It is intended that the term “voting rights”, as interpreted in section 3 of the proposed 23rd Schedule, applies only in relation to a subsidiary undertaking which is not a body corporate. We believe that this section will assist in interpreting the term “voting rights” in section 2(1)(b)(i) and (iii) of the same Schedule, in relation to a subsidiary undertaking which is not a body corporate and may not have the usual procedures (e.g. a general meeting) applicable to a body corporate.

(C) Section 3(3) of the 23rd Schedule

5. “Any rights held by the undertaking itself”, referred to in section 3(3) of the 23rd Schedule, arise when the subsidiary undertaking, vis-à-vis other rights holders, acquire such voting rights in itself. This can be the case when the subsidiary undertaking holds certain voting rights in the parent undertaking (e.g. through owning shares of the parent undertaking or a control contract), hence indirectly holding voting rights in itself. In this connection, the “rights held by the undertaking itself” are of the same type as “the voting rights” referred to in section 3(1) of the same Schedule in order for them to be reducible under section 3(3).

(D) Section 7(c) of the 23rd Schedule

6. Section 7(c) of the 23rd Schedule is modelled on paragraph 7(2) of Schedule 10A to UK Companies Act 1985. According to *Oxford Advanced Dictionary*, “concurrence” may mean “agreement” or “happening at the same time”. Our intention is that the word “concurrence” in section 7(c) of the 23rd Schedule, when taken together with the pronoun “his”, shall convey the first meaning (i.e. his agreement).

To reflect our policy intention, we will review the Chinese text of that provision.

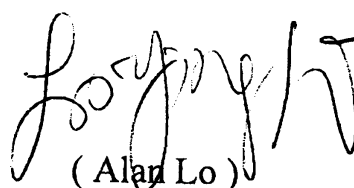
**(E) Consequential Amendment to Specification of Public Offices
(Cap. 1, sub. leg. C)**

7. We agree that the reference to section 126(2) of the Companies Ordinance in the Specification of Public Offices should be repealed, and will consider proposing a CSA for this purpose.

(F) Chinese text of section 128(2)(a) of the Ordinance

8. The drafting of the proposed section 128(2)(a) is based on the existing section 128(2)(a). The intention of the proposed section is to set out the circumstances under which shares of an undertaking which is a body corporate shall be treated as being held or otherwise by another undertaking. The Chinese text of the proposed section follows the precedent of the existing section. Having said so, we will review the Chinese text in the light of your observations.

Yours sincerely,



(Alan Lo)

for Secretary for Financial Services
and the Treasury

c.c.

Department of Justice

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