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CB(1)1453/09-10(05)

18 March 2010

BY FAX (2121-0420) & BY POST

Clerk to Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010
Legislative Council Secretariat
3rd Floor, Citibank Tower
3 Garden Road
Central, Hong Kong

Dear Sir,

Submission on the Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010

Reference is made to your letter of 26 February 2010 to The Hong Kong Institute of Chartered Secretaries (HKICS). As a Panel Member, I would like to express my support to the legislative changes proposed in the Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010 as below.

1. Electronic Registration of Companies and Filing of Company Documents

We welcome the Government's initiative in promoting the use of information technology and the use of environmentally friendly practices. We strongly support the proposed amendments to be made to the Companies Ordinance and the Business Registration Ordinance to provide for electronic registration of companies and filing of company documents.

By way of examples, we would like to share with you the recent experience of the other listed companies within our group which are incorporated in jurisdictions which permit e-communications with shareholders. Following the introduction of rules relating to electronic communications in the Hong Kong Listing Rules and its related guidelines in the last two years, these companies have taken the benefit of adopting the deemed consent procedures and as a result, the number of hard copies of annual reports required to be sent to the shareholders of these listed companies has been substantially reduced by between 70% to 85%. This is encouraging from an environmental protection perspective and has achieved cost savings on printing and postage for the listed companies.

2. Extend the Registrar's Power to Direct a Change of Company Name

We also welcome the statutory changes proposed by the Companies (Amendment) Bill 2010 in relation to the extension of the Registrar's power to direct a change of company name. By empowering the Registrar to act pursuant to court orders to direct a "shadow company" to change its name and to substitute the company's name with its registration number if it fails to comply with the Registrar's direction to change name will enhance the ability of the Registrar to reinforce protection of proprietary rights in intellectual property. The same power for the Registrar to substitute names of companies where a company fails to comply with a direction to change its name that is too like of another company on the registry is an effective measure to identify "shadow companies".

In particular, we would like to share with you our experience of abuses by "shadow companies" in respect of which considerable legal costs, time and effort had been incurred in order to deal with the same.

In September 2008, we came across a company known and registered at the material time as "Cheung Kong Holding Limited (長江實業有限公司)". Based on the legal advice we obtained, a complaint was filed with the Companies Registrar relying on Section 22 of the Companies Ordinance on the ground that the said company was incorporated with a name "too like" the name of our company. At the same time, warning letters were issued against the secretary, directors and founder members of the company demanding for a change of its company name. The company finally changed its name but after a lapse of more than one year.

Legislative Council Secretariat
Letter dated 18 March 2010

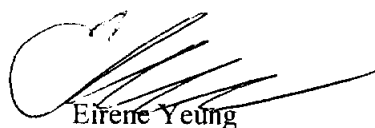
At about the same time, we came across another company known and registered at the material time as "Cheung Kong (Holdings) HK Limited (長江實業香港有限公司)". The company in this case was incorporated in 2005. As such, Section 22 could not be relied on as the Companies Registrar only has power under the existing law to direct a change of company name within 12 months of the registration of the company in question. No annual return had been filed by the subject company since its incorporation. Further, the secretary resigned after incorporation and no new secretary was recorded. With the limited information which was filed with the Companies Registry back at the time of incorporation, we were unable to contact any responsible officer of the company to demand for a change in its company name. In the circumstances, we were advised by our legal adviser to rely on Section 291 of the Companies Ordinance and requested the Companies Registrar to strike off the subject company on the ground that it was defunct. The subject company was formally dissolved under Section 291 after a lapse of 8 months.

3. Exempting Listed Companies from Giving Notice of Closure of Register of Members by Advertisement in a Newspaper

We welcome and appreciate the proposed exemption to be introduced by the Companies (Amendment) Bill 2010 to allow a listed company incorporated in Hong Kong to give notice of closure of register of members in accordance with the Listing Rules (which only require a listed company to publish its notice of closure of register of members on the HKEx's website), an alternative to the present requirement of giving notice by way of advertisement in a newspaper. As a listed company incorporated in Hong Kong, we have to continue to comply with Section 99 of the Companies Ordinance after the change of the Listing Rules which permits e-submission and e-communication of our notice of closure of register of members. We trust that the proposed exemption not only will help to bring the legal requirement in line with the Hong Kong Listing Rules, but will also ensure a level playing field between listed companies incorporated in Hong Kong and other jurisdictions such as Bermuda and the Cayman Islands.

For any queries or further information in relation to the above matter, please contact me at telephone no. 2122 2033, at fax no. 2128 8001 or at email address eirene.yeung@ckh.com.hk.

Yours faithfully,



Eirene Yeung