Letterhead of Stephenson Harwood & Lo

Miss Cindy Choi
Legislative Council Secretariat
3rd Floor Citibank Tower
3 Garden Road
Central
Hong Kong

Email: vkl@shl.com.hk
Tel:+852 2533 2790
Our Ref: VKL/Office/2002
Your Ref: CB1/BC/6/01

30th September 2002

Dear Sirs

Companies (Amendment) Bill 2002

Thank you for your letter dated 7 August 2002 and the invitation therein to supply the Bills Committee with our views to the proposed changes to the Companies Ordinance, as set out in the Companies (Amendment) Bill 2002 (the "Bill"). Set out below are our views on some of the changes proposed by the Bill.

We are in general agreement with the proposed changes. We note, in particular, many of the changes (such as the proposal to allow the existence of single member/director companies and the proposal to dismiss directors by ordinary resolution) are long overdue.

We only have minor comments on the proposed changes and these are set out below:-

1 **Section 95A:** We do not understand the rationale behind the new Section 95A. The number of members of a Company will only fall to one if there has been a transfer of shares by one member to the remaining member or there has been a repurchase of shares by the Company resulting in only one remaining member.

In both cases, such a transfer or repurchase should have been recorded in the register of members. Hence it should be quite obvious from looking at the register how many members there are in the Company. The additional requirement set out in Section 95A seems unnecessary.

2 **Section 116BC:** We disagree with the proposed Section 116BC. 30 days' delay in filing the written resolution is too long. It gives rise to the potential for abuse - unless the resolution is not effective until it has been received by the Company. It is all too easy for the relevant member to change its mind between the purported date of the resolution and the date of filing of the written records. Given that it is not possible to independently verify what the member has decided, the only clear 'proof' of the actions that the relevant member has taken is to refer to what has been filed with the Company.

We would have thought that a preferred method might be to require filing to be done as soon as possible and to provide (along the new Section 153C (relating to proofs of decisions of single director)) that such filing would be sufficient proof of the actions taken by the relevant member.

3 **Section 153B:** In principle, we agree with the proposal that a director should be liable for the acts of his/her alternates. After all, a director should not be allowed to be absolved of his/her duties entrusted by the members simply by appointing another person to fulfil

those obligations. However, we think that this liability should be weighted against the danger that directors who are not able to attend meetings will simply choose not to turn up rather than appoint competent alternates to turn up on their behalf.

We are not convinced that it would be better not to have directors turning up at board meetings than for such directors to appoint alternates (who bear the same fiduciary duties as other full directors) to attend board meetings. We wonder whether the ambit of Section 153B should be restricted such that a director will not be liable for the acts of his/her alternates if he/she has taken reasonable care to appoint a competent person to act as the alternate and the alternate's actions which gave rise to the liability have been taken independently of the director appointing him/her (i.e the original director is not a shadow director of the alternate).

Should you like to discuss this further, please contact Mr. Lai Voon Keat of this office.

Yours faithfully,

Stephenson Harwood & Lo