



THE

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OF HONG KONG

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BY FAX

16 October 2003

BY POST

Ms. Shirley Lam
Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Admiralty Centre, Tower 1, Hong Kong

Dear Ms. Lam,

Re: Companies (Amendment) Bill 2003

I refer to your letter dated 2 October 2003 and am pleased to attach comments on the Administration's responses prepared by the Law Society's Company & Financial Law Committee for your kind attention.

Yours sincerely,

Joyce Wong
Director of Practitioners Affairs
e-mail: dps@hklawsoc.org.hk

Encl.

cc Clerk to the Bills Committee
(Attn: Ms. Anita Sit)
Company and Financial Law Committee
Securities Law Committee



**Comments on the Administration's responses to the submission
from the Law Society of Hong Kong**

The point at issue is whether a non-Hong Kong incorporated company listed in Hong Kong should continue to be required to be registered under Part XI of the Companies Ordinance ("CO"), even where the company has no business presence in Hong Kong other than a share registration office. As the Hong Kong regulatory regime now stands, the answer is plainly yes. Many Hong Kong listed companies, including H-share companies, fall within this category and it would be wrong to take them out of the statutory disclosure regime of Part XI of the CO unless a suitable alternative is put in place.

As the Society has pointed out to the Administration some time ago in the consultation process, as the law now stands the "share registration office" element in the definition of "place of business" is the only basis on which these companies are required to be registered under Part XI of CO. In response to the Society's submission, the Administration took the view that these companies are already required by the Listing Rules to be registered under Part XI of CO. The Administration has now acknowledged that actually no such requirement exists. Accordingly, if the amendment to the definition of "place of business" is adopted as proposed, these companies will no longer be required to be registered under Part XI of CO, either as a matter of law or as a matter of Listing Rules requirements. Indeed, the Hong Kong Stock Exchange has mentioned in its publications the "share registration office" element of the relevant CO provision as the reason why these companies should be registered under Part XI of the CO.

The Administration mentioned in its responses to the Society's submission that "in practice, all of the 58 H-share companies listed on the Main Board and 28 listed on GEM are registered under Part XI of the CO."

The Society would like to point out that these companies are not registered under Part XI of the CO as a matter of practice. They are required to do so as a matter of law precisely because of the "share registration office" element of the definition of "place of business".

In conclusion, unless a suitable alternative is put in place, the Society takes the view that the relevant proposed amendment should not be made since (i) it would take a substantial number of existing Hong Kong listed companies outside the statutory disclosure regime of Part XI of the CO (except that the prospectus provisions will continue to apply) and (ii) when similar companies apply for a listing in Hong Kong, they will not be required to be registered under Part XI of the CO.

The Law Society of Hong Kong
Company & Financial Law Committee
16 October 2003
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