

**Responses to the submission from the Linklaters
on Schedule 3 of the Companies (Amendment) Bill 2003**

“Place of Business”

The proposal to delete “share transfer or share registration offices” from the definition of “place of business” was raised by the Standing Committee on Company Law Reform’s (“SCCLR”) Sub-Committee formed to conduct a review of Part XI of the Companies Ordinance (“CO”). The proposal was endorsed by the SCCLR which considered that the deletion would not cause practical problems and would give more flexibility. The requirement to register “share transfer or share registration office” should be determined by the same common law criteria for determining whether any companies has established a place of business. If a share transfer or share registration office is run by an agent which merely maintains a register of members in Hong Kong and does not satisfy any of the common law criteria of “having established a place of business”, such an office should be excluded from the definition of place of business.

However, in response to your concern, we have further consulted the Securities And Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEx). For the sake of better clarity, we agree to retain the phrase in question. We will follow up the matter with the Bills Committee.

As regards representative offices of non-Hong Kong companies, the intention of the proposed amendments to the definition of “place of business” was not to widen the scope of Part XI registration regime or to catch all such representative offices except those maintained by duly licensed banks as approved by the HKMA. One of the reasons for the proposal to exempt representative offices of duly licensed banks as approved by the HKMA was to remove the “double negative” provision introduced in 1984 in Section 341 which is unique to Hong Kong and has no parallel in other common law jurisdictions. When the definition was drafted in 1984, the HKMA did not exist but Hong Kong now has a sophisticated regulatory structure for banks. Given the supervision by the HKMA and the obligation to register under the Banking Ordinance, it is unnecessary to require the representative offices of overseas banks to register under Part XI.

In addition, under the proposed definition, representative offices of non-Hong Kong companies which are not in the banking industry are not necessarily excluded. Therefore, it would be necessary for practitioners to advise their clients in the future, as they do now under the existing provision as to whether they need to be registered, according to their particular circumstances by reference to the case law concerning what constitutes an established place of business.

Notices to be sent when non-Hong Kong companies cease to have place of business in Hong Kong

We consider that the notification period being seven days after the cessation of business is in line with international practice as both Australia and Singapore impose the same requirement. In the present commercial environment where electronic communications are being used more and more frequently, it should not be unduly onerous to require filing within 7 days.

**Financial Services Branch
Financial Services and the Treasury Bureau
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