Responses to the submission from
the Hong Kong Society of Accountants
on Schedule 3 of the Companies (Amendment) Bill 2003

Paragraph 2 of the Submission

A body corporate that is controlled by a firm of certified public accountants or solicitors may not necessarily have professionally qualified personnel actually working for that company and their staff members may not be even working in the same location as the controlling company which might diminish the degree of control over the company. It might thus be argued that there would not be sufficient certainty that process or notices served on the company would be properly attended to. On balance, we prefer retaining the wording of Section 333(5) in its present form as the existing provision has operated without any problems up until now.

Paragraphs 3 & 4 of the Submission

The issue raised by the HKSA is covered by the provisions of the new Section 335(1) (Clause 32 of the Bill) which provide as follows –

"(1)Where in the case of a non-Hong Kong company registered under this part, any alteration is made in –

(a) …
(b) the directors, secretaries (or whether are joint secretaries, each of them) or authorised representative of the company;
(c) …
(d) …
the company shall, within 21 days after the date of the alteration, deliver to the Registrar for registration a return in the specified form containing the particulars of the alteration."

This provision mirrors the existing Section 335(1) and the details of the alteration are required to be delivered in the specified form F3. The new provision does, therefore, contain a statutory grace period for registering details of the change in authorised representative with the Companies Registry so there should be no difficulty for a non-Hong Kong company registered under the Companies Ordinance (CO) finding itself "technically" in breach of the obligation to maintain authorised representative. The period allowed for filing (21 days) is considered

reasonable.

Paragraphs 5 to 7 of the Submission

The Standing Committee on Company Law Reform (SCCLR) considered that the phrase "and the officers of the company in Hong Kong" should be omitted from Section 337A(1) in line with Section 339. In that case, it places the obligation to deliver any further documents to the Registrar of Companies once the non-Hong Kong company has ceased to have a place of business in Hong Kong on the company, and not on the company and its officers. The fact that some oversea/non-Hong Kong companies might only have employees instead of officers in Hong Kong and the fact that only the company was required to file notices reporting other changes to its corporate structures were valid reasons for removing officers of the company from this provision. It seems to be less likely that once a petition has been issued for the liquidation of an oversea/non-Hong Kong company either in Hong Kong or elsewhere in the world, the directors would actually be within the jurisdiction of Hong Kong courts (particularly where the liquidation had commenced in another country) and thus not capable of being served with a prosecution for breach of an offence under this section.

The SCCLR also considered whether provisional liquidators and liquidators should be held responsible for giving notification to the Registrar of the commencement of winding up proceedings but it was felt that this provision should mirror similar provisions (Section 185 of the CO) concerning local companies for the sake of consistency. In practice, however, the Companies Registry has routinely accepted for registration notices of commencement of liquidation under the existing provision presented by the authorised representative or the liquidator and the new specified form which will be introduced in relation to this provision once the Bill has been enacted will require the following information –

(a) date of commencement of proceedings for liquidation;
(b) country in which proceedings has been commenced;
(c) the mode of liquidation (compulsory/members voluntary/creditors voluntary);
(d) particulars of the provisional liquidator or liquidator appointed;
(e) particulars of any provisional liquidator or liquidators resigning or ceasing to act or changes in their particulars.

As regards the proposal of including the date of hearing of the petition filed and the identity of the petitioner, we consider that the

present provisions are adequate. Those information can be easily ascertainable from the Official Receivers' Office or corresponding authority in other jurisdictions. There is no requirement in the present legislation or in the proposed Bill for liquidators to be required to provide a copy of the winding-up petition or order as it is considered more appropriate that this information be obtained either from the Courts or office responsible for registration of winding-up orders in the country in question. We also acknowledge the need to have a specified form for such filing.

Financial Services Branch
Financial Services and the Treasury Bureau
April 2004