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20 April 2004

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Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Monna,

**Bills Committee on
Companies (Amendment) Bill 2003 (the “Bill”)
Schedule 3 – Amendments relating to Oversea Companies and
Incorporation Procedures**

I refer to your letter of 8 April 2004 and enclose our responses to your comments as follows –

(1) Section 14A(2)(i)

The provision of Section 14A(2)(i), which is modelled on the existing sections 158(3) and 333(2)(b) of Companies Ordinance (Cap 32), is intended for administrative convenience. Where a company appoints all partners in a firm to be joint secretaries, for the sake of convenience, the form may simply state the name and principal office of the firm, instead of having to state the names and residential addresses of each of the partners. However, legally and the fact remains that each partner of the firm is appointed in his personal capacity and jointly with other partners as the company secretary. Where one partner resigns as a partner in future, the company will have to notify the Registrar of

Companies as this will be regarded as a change of secretary

(2) Section 14A(3)

The new Section 2(10) in the Companies (Amendment) Ordinance 2003 provides as follows –

“Any provision of this Ordinance that refers (in whatever words) to -
(a) the subscribers of the memorandum of association of a company;

...shall, unless the context otherwise require, apply with necessary modifications in relation to a company the memorandum of association of which has only one subscriber or that has only one person as a member or shareholder as the case may be.”

We propose to amend sections 2(10) and 14A(3) of the Ordinance (items 1 and 3 of **Annex**) to cater for the situation where the founder member is the sole member of the company. Accordingly, a founder member of a company which is to be formed as a one-member one-director company, will be able to comply with the proposed Section 14(3) by applying the necessary modification of submitting the incorporation form with the signature of only one founder member.

(3) Section 91(4)(b)

The provision deals with property which is already subject to a charge created by the previous owner when it was acquired by the non-Hong Kong company. This sub-section would not cover property which was acquired by a non-Hong Kong company from a previous owner which was transferred free of a prior charge. By way of example, say, where a charge was created on 25 July 2004, by a previous owner of the property the subject of the charge and that property was acquired by a non-Hong Kong company on 1 August 2004 when the property was located in Hong Kong, the 5-week exemption will run from 1 August 2004. However, if the property was not subject to a charge on the date of acquisition, i.e., using the dates quoted in the example above, the property was acquired free of charge on 1 August 2004, the exemption from registration will run from the date of creation of a subsequent charge by the non-Hong Kong company as provided under Section 91(4)(a), i.e., 5 weeks from the date of creation of the charge.

(4) (a) Section 291 and similar provisions

We confirm that the intention of this section is that any notice

should be sent to each of the founder members who signed the memorandum. Clause 22 of the Bill already provides for the required amendments to be made to section 291 to take account of the new term “founder member” and the “signing”, as opposed to “subscribing” of the memorandum.

However, to better reflect the meaning of the proposed section 291(8), we propose to amend the Chinese phrase from “送交每名在章程大綱內簽署認購股份的人” to “送交每名簽署章程大綱的人”.

Similarly, for the sake of consistency, we propose to amend the Chinese provisions of sections 103(6) and 360C(3) of the Ordinance, as follows –

- (i) the Chinese phrase “送交每名在章程大綱內簽署認購股份的人” in section 103(6) of the Ordinance be amended as “送交每名簽署章程大綱的人”; and
- (ii) the Chinese phrase “送交或交付每名在章程大綱內簽署認購股份的人” in section 360C(3) of the Ordinance be amended as “送交或交付每名簽署章程大綱的人”.

(b) Section 333(3)(d)

The English phrase “as may be chosen by the company” have already been rendered as “(視公司的選擇而定)” in the Chinese equivalent to clause 26 of the Bill. Same rendition can also be found in respect of the proposed section 336(2) of Companies Ordinance (Cap. 32).

(c) Section 337B

We agree with your proposed amendment such that in section 337B(3)(b), the phrase “(該公司的法人名稱除外)” appears after “批准的名稱”.

Similarly, we also propose that in section 337B(3)(a), the phrase “(該公司建議在香港經營業務所採用的法人名稱除外)” shall also be placed immediately after “批准的名稱”.

(5) Proposed Amendments to the Ordinance

We enclose at **Annex** a list of proposed amendments to the Ordinance. Some of the provisions are revised in view of the commencement of the Companies (Amendment) Ordinance 2003.

Yours sincerely,

(Shirley Lam)
for Secretary for Financial Services
and the Treasury

ANNEX

Proposed Amendments

Item No.	Section No.	Proposed Amendments
1	Section 2(10)	To amend Section 2(10)(a) to cater for the situation where the founder member is the sole member of the company.
2	Section 4(1)	To amend Section 4(1) to cater for the introduction of the term “founder member”.
3	Section 14A(3)	To amend Section 14A(3) to cater for the situation where the founder member is the sole member of the company.
4	Section 85(5)(a)(iii)	To amend Section 85(5)(a)(iii) to cater for the introduction of the term ‘non-Hong Kong company’.
5.	Section 103(6)	<p>To amend the Chinese version of Section 103(6) to better reflect the meaning of this section:</p> <p>The Chinese phrase “送交每名在章程大綱內簽署認購股份的人” be amended as “送交每名簽署章程大綱的人”.</p>
6.	Section 153A(2)	To amend Section 153A(2) to cater for the introduction of the requirement to stipulate the names of a company’s first director(s) in the specified form on incorporation which will remove the necessity to retain the deeming provision in section 153(A)(2).
7.	Section 153A	To amend Section 153A to cater for those companies registered prior to the enactment of the 2003 Bill who have not yet sent a return to the Registrar under section 158(4)(a) of the pre-amended Ordinance containing the required particulars in respect of the first directors of the company.
8.	Section 291(8)	To amend Section 291(8) to better reflect the meaning of this section:

Item No.	Section No.	Proposed Amendments
		To replace the Chinese phrase from “送交每名在章程大綱內簽署認購股份的人” to “送交每名簽署章程大綱的人”.
9.	Section 305	To amend Section 305 such that the definition of “document” included in Section 305(5) should apply to the whole of Section 305 (and not just Section 305(1)).
10.	Section 337B(3)(a) & (b)	<p>To amend Section 337B(3)(a) and (b) to improve the structure of the Chinese version:</p> <p>In section 337B(3)(a), the phrase “(該公司建議在香港經營業務所採用的法人名稱除外)” shall be placed immediately after “批准的名稱”.</p> <p>In section 337B(3)(b), the phrase “(該公司的法人名稱除外)” appears after “批准的名稱”.</p>
11.	Section 360C	<p>To amend Section 360C to better reflect the meaning of this section:</p> <p>The Chinese phrase “送交或交付每名在章程大綱內簽署認購股份的人” in the proposed section 360C(3) be amended as “送交或交付每名簽署章程大綱的人”</p>