

BY FAX AND BY POST
(2528 3345)

Our Ref.: C/EPLM, M27168

3 May 2004

Ms. Shirley Lam,
Financial Services Branch,
Financial Services and the Treasury Bureau,
18th Floor, Admiralty Centre Tower 1,
18 Harcourt Road,
Hong Kong.

Dear Ms. Lam,

Companies (Amendment) Bill 2003

I am replying your letter of 13 April 2004 inviting the Society's further comments on the Administration's responses to the issues that we raised in respect of Schedule 3 of the above Bill, and your letter of 16 April 2004, attaching draft Committee Stage Amendments to the provisions on injunction under Schedule 4 of the Bill.

Schedule 3 - Sections 333-333B Provisions relating to authorised representatives

Paragraphs 3 and 4 of the Society's submission of 27 October 2003 proposed retaining a statutory grace period for the appointment of a replacement authorised representative (AR) of a non-Hong Kong company, where an AR is terminated or quits. We had in mind something akin to the existing s333A(2) (copied at the Appendix) which is repealed under the Bill and which deems a non-Hong Kong company to comply with the continuing obligation under s333A(1), where an AR ceases to be able act on behalf of the company and the company delivers particulars of a new AR to the Registrar of Companies not later than six weeks afterwards. Without such a provision, a non-Hong Kong company could find itself in breach of the obligation, under the new s333A, to keep the details of an AR registered at all times.

Referring to the new s335(1), which mirrors the existing section 335(1) and requires inter alia the particulars of any alteration made in the AR, to be delivered to the Registrar of Companies for registration within 21 days after the date of the alteration, your response states: "The new provision does, therefore, contain a statutory grace period for registering details of the change in authorised representative with the Companies Registry..."

However, the new s335(1), which is similar to the existing s335(1) in this respect, does not appear to fully address our concern. While s335(1) would require a return to be submitted within 21 days of an AR ceasing to act as AR, or within 21 days of a new AR being appointed, it appears to be silent on the issue of any interval that may arise between the cessation of office of one AR and the appointment of a new AR, i.e. it does not appear to limit the interval in any way and it does not deem any specific maximum period to be treated as complying with s333A(1).

Under the circumstances, it appears that compliance by a non-Hong Kong company with s335(1) would not necessarily prevent it from being in beach of s333A and that there may be some inconsistency between the two provisions.

Schedule 4 - Draft Committee Stage Amendments

The Society has no comment on the draft Committee Stage Amendments, other than to note that they appear to make some improvements to the relevant provisions of Schedule 4 of the Bill.

Yours sincerely,

PETER TISMAN
TECHNICAL DIRECTOR
(BUSINESS MEMBERS & SPECIALIST PRACTICES)

PMT/JT/ay
Encl.

c.c. Clerk to the Bills Committee on the Companies (Amendment) Bill 2003 (Attn. Ms. Anita Sit)

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Section of Enactment



Chapter:	32	Title:	COMPANIES ORDINANCE	Gazette Number:	46 of 2000
Section:	333A	Heading:	Continuing obligation in respect of authorized representative	Version Date:	01/07/2000

(1) Any oversea company registered under this Part shall at all times, until the expiration of a period of 3 years from the date on which it ceases to have a place of business in Hong Kong, keep registered under section 333(1) the name and address of a person resident in Hong Kong who is authorized to accept service of process and notices on its behalf.

(2) Where a person registered as so authorized at any time ceases to be able to act on behalf of the company whether by reason of death or incapacity or other unforeseen reason, the company shall be deemed to comply with this section if, not later than 6 weeks from that time, the company delivers to the Registrar in respect of some other person so authorized the particulars and documents specified in section 333(1)(c) for registration under that section. (Amended 46 of 2000 s. 35)

(Added 6 of 1984 s. 229)

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