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CB1/BC/18/02

29 April 2004

Ms Katie Yip
Secretary
The Hong Kong Association of Banks
Room 525
Prince's Building
Central
Hong Kong

Dear Ms Yip,

**Bills Committee on
Companies (Amendment) Bill 2003**

I write further to our responses of 26 September 2003 on your submission of views on the captioned Bill. In view of the concern of the Association and the Bills Committee on the proposed concept of property being “brought into Hong Kong” in relation to the amendments to section 91 of the Companies Ordinance (the Ordinance), we undertook to review the concept and reconsider as to the appropriate criteria which should be used to trigger the registration of a charge by an overseas company.

Background

The concept of property being “brought into Hong Kong” originated from the UK. The UK Companies Act 1989 contained similar provisions to the proposed Section 91 but they have never been brought into force. The concept was then raised again by the UK Company Law Review Steering Group in its Consultation Paper entitled “Registration of Company Charges” which was issued in October 2000.

We understand that the Law Commissions in the UK are now examining the system for registering company charges. The Law Commissions are expected to produce their reports on this issue later this year. Noting the concern of the Association and the Bills Committee, we propose to put on hold the introduction of the concept and we will further review the provisions on the registration of charges in the light of developments in the UK.

Proposed CSAs

We propose to move Committee Stage Amendments (CSAs) to the Bill to remove the concept of “bringing into Hong Kong”. We propose to further amend Section 91 of the Ordinance (in Clause 14 of Schedule 3 of the Bill) as follows –

- (a) to repeal “, irrespective of whether the property was in Hong Kong at the time when those charges were created, or at the time when the property was acquired, by the non-Hong Kong company.” at the latter part of subsection (1); and
- (b) to repeal subsections (2), (3), (4), (5), (8) and (9).

We will also review the wording of subsection (12) to clarify the position of ships and aircrafts that are registered in Hong Kong.

We would be most grateful for your views on our proposed CSAs as soon as possible since we need to respond to the Bills Committee very quickly. Should you have any queries, please feel free to contact us.

Yours sincerely,

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

c.c.

R of C (Attn : Mr G W E Jones & Ms Dorothy Silkstone)
Clerk to Bills Committee (Attn : Ms Anita Sit)