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C2/1/57(04) Pt.6
CB1/BC/18/02

31 May 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**

Thank you for your letter of 19 May 2004.

We consider that the proposed section 91(2) already sets out in sufficiently clear terms the circumstances that require registration. Whether or not sections 91(1) and 91(2) should be combined is a matter of presentation or style. Similarly, we do not see the need to further amend subsection (7) of the Bill (which largely follows the wording of the existing section 91(3)) in respect of the date of registration.

As regards your concern about the necessity to obtain and maintain evidence as to whether a property is in Hong Kong, this is an issue upon which chargees should seek their own legal advice and should not be dealt with in the statute. The situation of the charged property at the time of creation of the charge or acquisition of the property is a fact readily ascertainable by the company and /or the chargee and, should it become necessary to establish the actual location of a charged property

on any particular date, is a fact which will have to be proved, in court if necessary, by production of the appropriate evidence. The statute only imposes an obligation to register charges with the Companies Registry and it is up to individuals to whom the filing obligation applies to prove (and to seek legal advice as to the nature of the best evidence available) that he has either discharged the obligation or that he is exempt from compliance.

We hope the above will clarify matters and address your concerns. 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) (with encl. of letter from
HKAB dated 19.5.2004)