

**The Stock Exchange of Hong Kong Ltd.**

*(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)*

Our Ref: RW20030920-0034

22 September 2003

Bills Committee on Companies (Amendment) Bill 2003  
Legislative Council  
Hong Kong SAR  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

**BY FAX (2121 0420) &  
BY POST**

Attn: Mr. Matthew Loo, Clerk to Bills Committee

Dear Mr. Loo,

**Companies (Amendment) Bill 2003**

I have pleasure in responding to your request for comments on behalf of the executive staff of the Stock Exchange of Hong Kong Limited ("SEHK"). We generally support the main objectives of the proposals set out in the draft Companies (Amendment) Bill 2003.

We also support the other initiatives taken by the Administration to enhance corporate governance in Hong Kong. Hong Kong must take a leadership role in corporate governance in order to maintain and enhance its competitiveness as a leading financial centre and the premier international capital formation for China.

SEHK is an advocate of improved corporate governance, enhancement of shareholder remedies and better enforcement (including tougher sanctions) for listed companies, directors and others who breach securities requirements. SEHK has made submissions (including to the Expert Group and the Standing Committee on Company Law Reform) for statutory amendments that would bring Hong Kong's statutory regime for regulation of listed issuers more in line with international standards.

There are two specific proposed amendments in the draft Companies (Amendment) Bill 2003 on which we would like to offer our further comments and support.

**Amendments enhancing shareholder remedies**

The proposed amendments enhancing shareholder remedies are an important development and we support these proposals.

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Protection of investors should involve an active role for investors, so proposals that facilitate the ability of minority shareholders to bring actions to protect their own interests should be supported. The new SFO does much to empower shareholders. Section 214 of the SFO empowers the Securities and Futures Commissions ("SFC") to bring actions against listed companies in cases of unfair prejudice or oppression of minority shareholders. As section 214 was only very recently enacted, there is no experience with this new civil right of action for "unfair prejudice" or oppression. Based on international experience, there are reasons to be optimistic about the potential efficacy of section 214.

However, the practical reality is that it is not realistic to expect minority shareholders to launch civil actions against listed companies and majority shareholders given the barriers that they face in accessing the legal system, financing costs for civil actions (which will take years), lack of information and ability to access information. In this environment, the proposed amendments constitute a step in the right direction. Civil actions brought by the SFC could also serve a useful purpose in seeking redress for shareholders, deterring corporate misconduct and enhancing corporate governance generally. Our views on this further development are contained in a recent submission to the Financial Services and Treasury Bureau and SFC in response to their joint request for views on a proposal to empower the SFC to initiate a derivative action on behalf of a company.

**Definition of "Subsidiary" for Group Accounts**

We fully support the amendments to introduce the concepts from the UK of an "undertaking" and control by virtue of "the right to exercise of a dominant influence over another undertaking". These are an important addition to the existing provisions for defining the scope of a group for accounting purposes and will contribute to the provision of more meaningful financial information concerning the substance of a group's activities. SEHK will propose further amendments to its Listing Rules upon implementation of these provisions particularly in the area of notifiable transactions.

Yours sincerely,



Richard Williams  
Head of Listing

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c.c. Mr. Paul Chow