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THE HONG KONG INSTITUTE OF COMPANY SECRETARIES  
香港公司秘書公會

The Clerk to the Bills Committee  
Legislative Council Secretariat  
3/F, Citibank Tower  
3 Garden Road, Central  
Hong Kong

Attention: Mr Matthew LOO

Your Ref: CB1/BC/18/02

22 September 2003

By Fax 2121-0420 & By Post

Dear Sir,

**Companies (Amendment) Bill 2003**

Thank you for your letter of 24 July 2003 inviting the Institute to submit views on the above-referenced Bill.

On behalf of the Institute, I have pleasure in enclosing the Institute's submission.

Yours truly,

Linda Wong  
Director, Professional Development

Encl.

LW/cc

c.c. Hon Audrey EU Yuet-mee, SC, JP (Chairman of the Bills Committee)





**Response by The Hong Kong Institute of Company Secretaries to the Bills  
Committee of the Legislative Council on the Companies (Amendment) Bill 2003**

The Hong Kong Institute of Companies Secretaries (“HKICS”) welcomes the opportunity to comment on the Companies (Amendment) Bill 2003 and submits its views below.

**1. Schedule 5 - Consequential amendments**  
**Part 3 - Companies (Forms) Regulation**

1.1 Section 2 of Part 3 proposes to repeal Regulation 3 of the Companies (Forms) Regulation and substitute therefor with new content, which aims to expand the categories of persons who may certify copies of documents required to be delivered to the Registrar of Companies as true copies.

1.1.2 In Regulation 3(2)(a) (vi) and (b) (vi), it is proposed that such certification may be carried out “by a company secretary practicing in that place” and “by a company secretary practicing in Hong Kong” respectively.

1.1.3 HKICS takes the view that the words “professionally qualified” should be inserted before “company secretary” in both cases listed under item 1.1.2 above for the following reasons:

- (a) in the context of a company, “company secretary” may be a mere functional title;
- (b) however, in the context of the profession of company secretary, “company secretary” must be qualified to be recognized as such within the profession;
- (c) the word “practising” in the proposed wording of “a company secretary practising in...” in the Bill presupposes at least some sort of qualifications and professional standards;
- (d) in Hong Kong, a person is professionally qualified as a “company secretary” by means of fulfilling certain specified standards including examinations requirements and fit and proper criteria set by HKICS; and
- (e) in certain overseas jurisdictions, the professional standards and requirements mentioned under item (d) above also exist in an institute or other professional body similar to HKICS.

1.1.4 It is proposed in Regulation 3(2)(c) and (d) that such certification may also be carried out “by an officer of the company” and “by the authorized representative of the company” respectively.

1.1.5 HKICS takes the view that these two categories of persons should be excluded as opening up certification rights to a wider body without specifying any

professional qualifications or standards –

- (a) would seriously dilute the value of the verification process; and
- (b) would render it pointless for the provision of other categories of persons who are either (i) professionally qualified such as a solicitor or a notary public, or (ii) a government or court official.

1.2 Section 4 of Part 3 proposes to repeal Regulation 6 of the Companies (Forms) Regulation and substitute therefore with new content, which aims to expand the categories of persons who may certify the competence of translators who produced certified translations of documents for the purpose of the Companies Ordinance.

1.2.1 HKICS proposes that the words “professionally qualified” should also be inserted before “company secretary” in the proposed Regulation 6(2)(a)(vi) and (b)(v) for the reasons listed under item 1.1.3 above.

## **2. Schedule 4 – Amendments enhancing shareholders remedies**

HKICS endorses the proposals –

- (a) in section 3 of empowering the court, on application by a member of an overseas company or Hong Kong company, to make an order to allow the member or his representative to obtain access to company records;
- (b) in section 4 of providing for the court to award damages to the members of a company where it is found that their interests have been unfairly prejudiced; and
- (c) in section 6 of empowering the court, on application by an affected person or the Financial Secretary, to grant an injunction restraining any person from engaging in conducts which constitute contravention of the Companies Ordinance or a breach in fiduciary or other duties owed to the company.

## **3. Schedule 3 – Amendments relating to overseas companies and incorporation procedure**

HKICS is in favour of the proposals to improve the registration system for overseas companies and to streamline the incorporation procedures.

## **4. Schedule 1 – Amendments updating the prospectus regime**

4.1 HKICS considers streamlining the prospectus regime is necessary to enhance an efficient, competitive and fair regulatory environment positioned to attract more financial product issuers to Hong Kong as well as capital and investors from outside Hong Kong, and offers observation and suggestion below.

4.2 Enhanced clarity of the application of the prospectus regime – In relation to the principal types of offers in respect of which offer documentation is proposed to be excluded expressly from the definition of “prospectus”, the fundamental issue of when an “offer to the public” arises deserves further examination. For instance, whether an offer to a section of the public and an offer to a group of people in their private capacity would in each case constitute an “offer to the public. In this connection, it is noteworthy that the High Court of Australia pronounced in *Australian Central Credit Union v Corporate Affairs Commission* (1985) that an offer by a credit union to its 23,000 members did not constitute an “offer to the public” and

there was no need to issue a prospectus on the grounds that (i) there was a subsisting special relationship between the offeror and members of a group and (ii) there was a rational connection between the common characteristics of members of a group and the offer made to them.

4.3 Permissible advertisements and “dual prospectus” structure – In relation to achieving the objective of enhancing investors’ awareness of an offer, it might be worthwhile for the Stock Exchange of Hong Kong (SEHK) to take charge of a forthcoming issue at the outset by SEHK’s publicising it in the form of an advertisement the cost of which can be recovered from the issuer. This can be accomplished with the consent of the issuer once it has been granted permission to list by the SEHK but before the issue of the prospectus. The details publicised may include such matters as the name of the issuer and its directors and those of the sponsors and underwriters, the proposed size of the offer, and relevant dates. In terms of timing this will be the “pre-prospectus” phase, then comes the “prospectus” phase which sees the issue of the prospectus to be followed by the “post-prospectus” phase in the form of repeat advertisements as necessary by the issuer.

4.4 The prospectus itself - HKICS advocates the use of plain language in both English and Chinese to render the document “user friendly”, thereby achieving the objective of providing simple and clear information to allow the investing public to make informed investment decision. Currently, the language usage in prospectuses is far too difficult for the average investing public to comprehend as it is geared to be technical by professionals who draft them strictly to satisfy legal and regulatory requirements. It has often been observed that, particularly in Initial Public Offers (IPO) that were widely publicized, the general investing public would flock to receiving banks to collect application forms without bothering to pick up the prospectuses. In this connection, during periods of IPO some receiving banks’ practice of “crowd control” by placing the application forms closer to the entrance while placing the prospectus itself further into their premises should be discouraged.

September 2003