

CB(1)2504/02-03 (08)

**Practitioners Affairs**

PA0005/03/71109  
CB1/BC/18/02

19 September 2003

Mr. Matthew Loo  
for Clerk to Bills Committee  
Legislative Council Building  
8 Jackson Road, Central, Hong Kong

Dear Mr. Loo,

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

I refer to your letter dated 24 July 2003 and attach copy submissions prepared by the Law Society's Company & Financial Law Committee. The Society will not be sending any representatives to attend the Bills Committee meeting on 2 October 2003.

Yours sincerely,

Joyce Wong  
Director of Practitioners Affairs  
e-mail: dpa@hklawsoc.org.hk

Encl.



## **Companies (Amendment) Bill 2003**

The Committee took the view that the proposal to remove the element of share transfer office from the definition of a "place of business" could have a significant impact on the amount of information available in respect of companies listed in Hong Kong where neither the place of business nor the place of incorporation is in Hong Kong. For example, most H share companies would no longer be required by the Companies Ordinance to register under Part XI if this proposal were adopted.

In response to our paper, the Financial Services Branch wrote to the Law Society on 2 August 2002 stating, inter alia, that in order to comply with the Hong Kong Stock Exchange's Listing Rules, all Hong Kong listed companies need to establish offices instead of simply keeping share registrars in Hong Kong. The letter went on to state that therefore all Hong Kong listed companies, including H share companies, would in any event be caught by the "establishment of place of business" test. Reference was then made to a similar proposal in U.K. and the fact that the Standing Committee on Company Law Reform ("SCCLR") considered that the removal of "share transfer or share registration offices" from the definition of place of business in the Companies Ordinance would give more flexibility without causing practical problems. A copy of the letter dated 2 August 2002 from the Financial Services Branch is attached for your ease of reference.

However, contrary to what is stated in the Financial Services Branch's letter, it appears that there is no requirement under the Listing Rules for a place of business to be established before a company can be listed in Hong Kong, although if there is such a place the address must be mentioned in the listing document. All that is required is the appointment of a service agent in Hong Kong and that there must be a place in Hong Kong for document inspection in certain circumstances. If the proposal of the Financial Services Branch is adopted, none of these would necessarily amount to a "place of business".

On the other hand, the Listing Rules require that, in the case of registered securities, provisions must be made for a register of holders to be maintained in Hong Kong and for transfer to be registered locally. Actually in past literature published by the Stock Exchange (e.g. in page 23 of "Listing Chinese Companies

Hong Kong" 2nd edition 1998), the fact that the listed companies must maintain a share registration office in Hong Kong and that this amounts to a "place of business" under the Companies Ordinance was mentioned as a reason for requiring listed companies to be registered under Part XI of the Companies Ordinance.

In the circumstances, it seems that the statement used by the Financial Services Branch to support the proposal is mistaken. In relation to the position in the UK and the fact that the proposal has been discussed at SCCLR, I could only say that the position in the UK is different and it is not apparent that the practical implications of removing the "share registration office" element from the definition of "place of business" has been examined by the SCCLR. Perhaps those colleagues who have been involved in the SCCLR discussion could let us know whether this aspect was actually discussed at SCCLR.

Therefore, my personal view on the matter is that unless adequate arrangements are in place to ensure that the change would not result in less information being available in respect of companies listed in Hong Kong, the proposed change should not be implemented. I would be grateful if members of the Committee and let me have their view as to whether a submission to this effect should be made to Legco.

**The Law Society of Hong Kong  
Company & Financial Law Committee  
19 September 2003  
71069**

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By Fax and By Post

2 August 2002

Ms Joyce Wong  
Director of Practitioners Affairs  
The Law Society of Hong Kong  
3/F Wing On House,  
71 Des Voeux Road,  
Central, Hong Kong

Dear Ms Wong,

**Proposed Reform of the  
Registration System for Oversea Companies**

Thank you for your letter of 27 May 2002. Your comments on the proposals contained in our information paper submitted to the Legislative Council Panel on Financial Affairs are much appreciated. We have carefully considered the comments attached in your letter. Our responses are as set out below:

**Definition of a Place of Business (paragraph 5 of the information paper)**

You suggested that all listed companies should be treated as having a place of business at their share transfer office. In this regard, you may already be aware that, in order to comply with the Hong Kong Stock Exchange's Listing Rules, all Hong Kong listed companies need to establish offices instead of simply keeping share registers in Hong Kong. Therefore, all Hong Kong listed companies, including H share companies, would in any event be caught by the "establishment of place of business"