

19 September 2003

Hon Audrey Eu Yuet-mee, SC, JP
Chairman, Bills Committee on Companies (Amendment) Bill 2003
Legislative Council
By fax: 2121 0420

Dear Ms. Eu

Bills Committee on Companies (Amendment) Bill 2003

We write to give the Association's comments for the consideration of the Bills Committee on the proposed amendments under Schedule 3 of the Bill about charges on property of a non-Hong Kong company, where the property was not in Hong Kong at the time when those charges were so created.

It was proposed that in subsection (1) of section 80, the words "within 5 weeks after the date of its creation" shall be substituted with the words "within 5 weeks after the date when it is brought into Hong Kong". Clarification in the following areas is sought:

1. What is the definition of "brought into Hong Kong"? Further, is it necessary to provide evidence/supporting documents to the Companies Registry for registering the charge? If so, what kind of evidence is required? Would a Director's declaration/certification suffice?
2. We understand that it is quite common that "date of document" is interpreted as "date of creation" and the filing period shall count 5 weeks from the date of document. Should the Bill be enacted, the filing date would count from the date when the property is "brought into Hong Kong". Does it mean that the Companies Registry would not accept filing for those charges that were created by a non-Hong Kong Company where the property is not yet in Hong Kong at the time of the charge? If so, how does the Companies Registry make such decision?
3. We note that the proposed amendments intend to simplify the filing requirements. However, for monitoring purposes and ease of operation, it may be more practical to require filing of the charge once it is created as it would be rather difficult to monitor when the property is "brought into Hong Kong", especially for those properties such as offshore deposits and scriptless shares involving no physical transfer in and out from Hong Kong.

As it is the practice of most banks in Hong Kong to arrange filing of charges of an overseas company both in Hong Kong and in its country of incorporation (if filing is necessary

according to its local laws), the proposed amendments would have a significant impact on banks' operating procedures and clarification to the above issues would thus be desirable.

In the event that the proposed amendments are to be revised to improve clarity, we should be grateful for the opportunity to be consulted on the draft wording when it is ready. Pending receipt of a response to this letter, we have no further issues to raise and accordingly we will not attend the Bills Committee meeting on 2 October 2003.

Yours sincerely,

Rona Morgan
Secretary

c.c. Mr. Matthew Loo, Legislative Council