

## **Submission from The Hong Kong Chinese Enterprises Association**

With regard to the Companies (Amendment) Bill 2003 (hereinafter called the "Bill"), we submit the following comments for your reference.

In general, the Bill betters the balance of promoting the market development and safeguarding investors' interests and also helps to improve HK corporate governance.

The Bill is divided into 4 main sections. Schedule 1 to the Bill deals with amendments to the Companies Ordinance (the "CO") relating to prospectus. Schedule 2 deals with amendments relating to group accounts. Schedule 3 sets out the amendments to the CO relating to Part XV "oversea companies" whilst Schedule 4 deals with shareholder remedies.

With respect to Schedule 1, our principal comments are in relation to the meaning of "untrue statement" for the purposes of determining civil and criminal liabilities for misstatements in prospectus under sections 40 and 40A of the CO. Clause 11 of Schedule 1 to the Bill amends the CO such that "untrue statement" in relation to any prospectus will include any "material omission" from the prospectus. To determine whether an omission is a "material omission", it will be helpful for the CO to set out a disclosure standard or guidelines on what constitutes a "material omission" and elaborate on what is currently provided for in paragraph 3 of the Third Schedule.

The purpose of the Schedule 2 is to modify the meaning of the term "subsidiary" in the CO in order to make it more closely aligned with the meaning attached to the term in the International Accounting Standards. Amongst others, the Bill proposes that the meaning of "subsidiary" for the purposes of preparing group accounts should be extended to include "subsidiary undertaking" and the "right to exercise a dominant influence over another undertaking" would be added to the existing tests of determining the existence of parent/subsidiary relationship. Our principal comment on this is that the proposed amendments, as they now stand, would likely have a negative effect on the development of the Hong Kong asset-back securitisation market as the consolidation of special purpose entities brought about by the extended definition of "subsidiary" would undermine the incentive for asset securitisation.

Amongst others, the proposals set out in Schedule 3 to the Bill aim to simplify the registration requirements of Part XI overseas companies (to be renamed non-Hong Kong companies) and enhance the disclosure requirements relating to such companies. We support these proposals in general. We noted however that the definition of "place of business" in Section 341 of the CO will be amended. The new definition will only carve out local representative offices established or maintained with the approval of the HKMA and will not specify any scope nor spell out the circumstances under which a non-Hong Kong company would be considered as having a "place of business" in Hong Kong.

The new definition could give rise to factual difficulties or disputes (eg. whether a H share company listed on the Stock Exchange will be considered as having a "place of business" in Hong Kong if its only presence in Hong Kong is a share transfer and share registration office). By way of contrast, it is worthy to note that section 744 of the UK Companies Act defines a "place of business" as including "a share transfer or share registration office". We would recommend the CO to set out some guidelines on the meaning of a "place of business" and to include in the definition at least the reference to "share transfer or registration office". Furthermore, we also note that the requirement for any non-Hong Kong company ceasing to have a place of business in Hong Kong to "forthwith" give notice is now specified under clause 38 of Schedule 3 to the Bill to be seven days after ceasing to have the place of business. This requirement may be onerous and we would recommend to extend the notification period to 14 days.

With respect to Schedule 4, we note that the proposals have been exposed in the SCCLR's Corporate Governance Review consultation paper issued in 2001. We do not have any substantive objection to the proposed amendments.