

**Responses in response to the submission from  
The Law Society of Hong Kong**

The proposal to delete “share transfer or share registration offices” from the definition of “place of business” was raised by the Standing Committee on Company Law Reform’s (“SCCLR”) Sub-Committee formed to conduct a review of Part XI of the Companies Ordinance (“CO”). The proposal was endorsed by the SCCLR which considered that the deletion would not cause practical problems and would give more flexibility. If a share transfer or registration office only dealt with keeping the share register of the company itself and did not fulfil any of the other common law criteria of “having established a place of business”, such an office should be excluded from the definition of place of business.

Indeed, the Sub-Committee under the SCCLR received submissions from the Hong Kong Association of Banks, the Law Society of Hong Kong and the Hong Kong Institute of Company Secretaries that they were not in favour of including the expressions “share transfer or registration office” in the definition of “place of business”.

There is already a body of case law on what constitutes an established place of business, adequate precedents exist to determine when and how a business may be caught by the definition without the need to spell out specific criteria or examples in the definition. The two primary criteria for determining that a company has established a place of business are as follows –

- It has a specified or identifiable place at which it carries on business which has more than a fleeting character; and
- There is some visible sign or physical indication of the company having a connection with particular premises

Pursuant to paragraph 19A.13(2) of the Listing Rules (relating to Equity Securities Issuers incorporated in the PRC), such issuers are required to appoint a person authorized to accept service in Hong Kong. This person may be the same person authorized to accept service required to be appointed under Part XI of the CO. Whilst it is true to say that this does not amount to a requirement to register under Part XI, in practice, all of the 58 H-share companies listed on the Main Board and 28 listed on

GEM are registered under Part XI of the CO. This would appear to indicate that there would be no real impact on the amount of information available in respect of H-share companies if the definition of “place of business” were amended as proposed.

Financial Services Branch  
Financial Services and the Treasury Bureau  
September 2003