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Secretary for Financial Services
and the Treasury
Financial Services and the Treasury Bureau
(Attn: Mrs Dorothy MA, PAS (FS) 1)
18/F, Tower 1
Admiralty Centre
18 Harcourt Road
Hong Kong

By Fax (2861 1494) and By Post

9 October 2003

Dear Mrs MA

Companies (Amendment) Bill 2003

I refer to your letter of 26 September 2003 and have the following comments:

The new section 2

Please clarify the ways(s) in which a prospectus has to be issued for the compliance of the requirements under the Companies Ordinance (Cap. 32) ("the Ordinance"), such as in printed or electronic form etc. and that the current definition is sufficient for such purpose.

Section 342D

Section 342D is compared with section 342AB as both are penalty for offences of offering to the public for subscription or purchase of shares in or debentures of a company incorporated outside Hong Kong without a prospectus which complies with the requirements under the Ordinance. The difference between these sections is that under section 342D, the offer is made by any person (except under section 342AB) while under section 342AB, the offer is made by any person who acquires the shares or debentures pursuant to an offer specified in Part 1 of the 17th Schedule. References can also be drawn to section 38(3) and section 38AA(4) which set out the penalty for offences of offering to the public for subscription or purchase of shares in or debentures of a company without a prospectus which complies with the requirements under the Ordinance. The difference between these sections is that the

offer under section 38 is presumably made by any person and under section 38AA(4) the offer is made by a person who acquires the shares and debentures pursuant to an offer specified in Part 1 of the 17th Schedule. As the offences are of similar nature, please account for the policy intent for the difference in the penalty imposed for these sections:

| <u>Section</u> | <u>Offence - offer to the public for subscription and purchase of shares and debentures</u> | | <u>Penalty</u> |
|----------------|---|--|----------------|
| | <u>of/in</u> | <u>by</u> | |
| 38(3) | company | any person | \$100,000 |
| 38AA(4) | company | a person who acquires shares or debentures pursuant to Schedule 17 | \$100,000 |
| 342AB | non-Hong Kong company | a person who acquires shares or debentures pursuant to Schedule 17 | \$100,000 |
| 342D | non-Hong Kong company | any person | \$150,000 |

It is appreciated that your reply in both Chinese and English could reach us on or before 14 October 2003.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

c.c. Miss Susie HO, DS (FS) 2