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財經事務及庫務局
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本函檔號 OUR REF.: G6/123/4C (2003) Pt. 19

來函檔號 YOUR REF.:

4 December 2003

Miss Monna Lai
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Miss Lai,

Companies (Amendment) Bill 2003 – Schedule 1

Thank you for your letters of 25, 26 and 28 November 2003, setting out your comments on or suggestions for improvements to Schedule 1 of the Companies (Amendment) Bill 2003. We have consulted the Securities and Futures Commission (SFC) and our joint reply is as follows.

Letter dated 25 November 2003

You enquired about the power of SFC to suspend or withdraw the exemption granted under the proposed new section 38A.

The proposed new section 38A does not explicitly provide SFC with the powers to suspend or withdraw the exemption granted under section 38A. From the operational point of view, such powers are not necessary under the existing prospectus regulatory regime. If SFC were to withdraw or suspend an exemption already granted, the prospectus would have already been authorised and published. Moreover, SFC grants an exemption based on information submitted by the issuer and no

further information is required to be submitted to SFC in respect of that particular prospectus once it is published. Hence, the case for SFC to review an exemption granted does not arise. Subject to Members' views, we may propose technical amendments to the proposed new sections 38A(6) and 342A(6) to clarify that SFC does not have the powers to withdraw or suspend exemption during the clause-by-clause examination of Schedule 1 of the Bill at the meeting on 9 December 2003.

We agree with your comments on our draft CSAs to the proposed new section 342CC(b)(iv) to clarify that a professional accountant means one falls within the meaning of section 2 of the Professional Accountants Ordinance, and to the proposed new section 12 of Part 1 of the 17th Schedule, i.e. add "in" before "connection with". As regards the suggestion of replacing the word "published" with "issued" in the proposed new sections 38A(8)(b) and 342A(8)(b), we agree that the word "issued" is preferable for the sake of clarity.

Letter dated 26 November 2003

You enquired whether SFC's plan to set up a designated webpage to set out the exemption particulars as explained in paragraph 3 of the paper on "Exemption powers of the Securities and Futures Commission" (Paper No. CA1-2/03) would be incorporated into the Bill. You may wish to note that the purpose of paragraph 3 of the paper is to explain how SFC intends to discharge its statutory obligation to publish on-line particulars of exemptions granted under sections 38A and 342A(1). We have no intention to include the implementation details in the Bill. Similar implementation arrangements have been made for relevant provisions under the Securities and Futures Ordinance (e.g. section 309 under the disclosure regime). These are not set out in the statute.

Letter dated 28 November 2003

We agree with your comments on the English version of the revised section 7 of Part I of the Seventeenth Schedule. As regard the Chinese version, we believe that section 7(a) may be amended accordingly, as follows –

- “(a)(i) 向某公司股份的任何或所有持有人作出的無需代價而取得該公司的股份的要約；或
- (ii) 向某公司任何類別的已發行股份的所有持有人作出的該公司的股份的要約，作為股息或其他分發以外的選擇，但要約提供的股份須與該等持有人所持股份屬同一類別的繳足股款股份；及”

Yours sincerely,



(Mrs Dorothy Ma)
for Secretary for Financial Services and
the Treasury

c.c. Clerk to Bills Committee (Attn.: Ms Anita Sit)
DoJ (Attn.: Mr John Wilson
Mr Allen Lai
Miss Carmen Chu)
SFC (Attn.: Mr Ashley Alder)

Internal

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