LC Paper No. CB(1)647/04-05(01)

The Hong Kong Capital Markets Association

31 December 2004

Your ref: CB1/BC/3/04

Clerk to Bills Committee
The Legislative Council
Legislative Council Building
8 Jackson Road
Central Hong Kong

(Attn: Ms. Connie Szeto)

Dear Sir/Madam,

Bills Committee on Companies (Amendment) Bill 2004
Invitation for submissions

Thank you for your letter of 10 November 2004. Please find below the submission of The Hong Kong Capital Markets Association ("HKCMA") for your further action.

The HKCMA believes that the proposed entrenchment of the definition of "subsidiary" in the Companies Ordinance ("CO") would put Hong Kong at a competitive disadvantage in terms of the development of a vibrant securitisation market. In particular, we believe that the proposed amendments will make off-balance sheet treatment, which is a major driver for some transactions, extremely difficult to achieve. This would have the unfortunate effect of dampening the development of securitisation as a useful and popular financing and capital management tool. In turn this will inhibit the securitisation market from reaching its issuance potential and limit the further development of Hong Kong's capital markets.

Asset backed issuance in Hong Kong in 2003 was approximately HK$6.25 billion. The most significant issuers being The Hong Kong Mortgage Corporation Limited ("HKMC") through its Bauhinia residential mortgage securitisation programme and HSBC's synthetic taxi lease transaction, Lion Synthetic Limited. Issuance in 2004 is estimated at approximately HK$14 billion. The majority of this issuance has been and will be from government related entities, including the Hong Kong Link 2004 Limited toll revenues securitisation, and the HKMC's Bauhinia programme.

While the above figures show some promising growth, on a comparative basis the market is still extremely small and utilized by only a limited number of issuers. Continued growth and expansion in the number of issuers will only be supported by the ability to achieve off balance sheet treatment for securitised assets, which the proposed amendments will unfortunately curtail.

The HKCMA has been working closely with market participants on this issue. More specifically, we are in support of the idea of carving out securitisation special purpose entities ("SPEs") from the definition of "subsidiary" similar to the concept of the Qualifying SPE available under US accounting rules. It is also noteworthy that in the European Union, international accounting standards ("IAS") 39 was recommended for adoption with two carve-outs to address concerns expressed by the financial community.

We also believe that in addition to looking at common law jurisdictions such as Australia and Singapore for comparisons, the Bills Committee should also consider the standards and practices adopted by countries such as the United States, Korea, and Japan that have legislation and accounting standards that promote securitisation and have a well developed securitisation industry. (In the United States, total outstanding of asset-backed securities as of 30 June 2004 was US$7.1 trillion. In Korea and Japan, changes in securitisation laws have enabled their markets to grow substantially in the last few years.)

Hong Kong is well positioned to be an international debt financing centre and the emergence of a vibrant securitisation market is crucial in our continued development. As such, the HKCMA would urge the Bills Committee to positively consider the suggestions put forth above.

Yours truly,

Brian Yiu
Chairman