



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函編號 YOUR REF :
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By Fax (2869 4195)

22 February 2010

Mr Arsene YIU
AS for Financial Services & the Treasury (Financial
Services)(6)1
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr YIU,

Companies (Amendment) Bill 2010

I am scrutinizing the legal and drafting aspects of the above Bill. I would be most grateful if you could clarify the following matters:-

Use of gender-neutral language

- (a) It is noted that "his" and "him" are used in the existing section 14A(2)(h) and (i) of the Companies Ordinance (Cap. 32) (the Ordinance). However, it is noted that "he or she" is used in the new section 14A(2)(k) and (l) as amended by clause 5(3) of the Bill. Please consider whether it would be more consistent to use the same style of phrases in the same section of an ordinance.
- (b) It is also noted that "他" (but not "他或她") is used as the Chinese rendition of "he or she" in the new section 14A(2)(k) and (l) as amended by clause 5(3). Please consider whether it is necessary to amend the Chinese rendition of "he or she" to reflect the meaning of the English text.

The use of "shall" and "must" in the same section

It is noted that "shall" is used in the existing sections of the Ordinance (e.g. sections 20, 22, 95, 109, 158 and 346). However, "must" is used in the new sections added by the Bill (e.g. the new sections 20(2A), 22(3A), 95(1A), 109(1C),

158(4AB) and (5B), and 346(2A)). The effect of this is that there would be intermixing of the use of "must" and "shall" in the same section of the Ordinance. To achieve consistency within the above sections, please consider amending "shall" to "must" in the relevant sections. It is noted that similar amendments have been introduced in the Occupational Deafness (Compensation) (Amendment) Bill 2009.

Part 7 - clauses 36 to 48

- (a) Clauses 36 to 48 seek to remove obstacles to the introduction of paperless holding and transfer of shares and debentures. Under section 4 of and Schedule 1 to the Stamp Duty Ordinance (Cap. 117), a contract note for the sale or purchase of any Hong Kong stock is chargeable with stamp duty. Would the amendments under Part 7 of the Bill have any implications on stamp duty chargeable under the Stamp Duty Ordinance (Cap. 117)?
- (b) It is noted that under section 3 of and Schedule 1 to the Electronic Transactions Ordinance (Cap. 553), the provisions of that Ordinance relating to the use of electronic records do not apply to the making, execution or making and execution of any instrument which is required to be stamped or endorsed under the Stamp Duty Ordinance (Cap. 117) other than a contract note to which an agreement under section 5A of that Ordinance relates. Under section 4 of and Schedule 1 to the Stamp Duty Ordinance (Cap. 117), a contract note for the sale or purchase of Hong Kong stock is chargeable with stamp duty. In order to introduce paperless holding and transfer of shares and debentures, apart from amending the Companies Ordinance (Cap. 32) and section 397 of the Securities and Futures Ordinance (Cap. 571), is it necessary to also amend the Electronic Transactions Ordinance (Cap. 553) and/or any other ordinances?

I shall be most grateful if you could let me have your response in both Chinese and English to the above queries on or before 5 March 2010.

Yours sincerely,



(Timothy TSO)
Assistant Legal Adviser

c.c.DoJ (Attn.: Ms Amy CHAN, Sr Govt Counsel
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