

2 May 2003

Financial Services Branch
18/F., Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

Attn: Mr Esmond Lee

Dear Sir,

Re: Companies (Amendment) Bill 2002

Thank you for your letter of 24th April 2003, with its enclosures.

We are pleased that the Bills Committee is proposing amendments to the Bill to allow for a reserve director to be appointed.

However we have the following further comments:-

1. Appointor of the Reserve Director

The proposed draft amendment provides for appointment (and revocation) of the reserve director by the company. We suggest that it would be preferable to make clear whether the power is exercisable by the relevant person in his capacity as sole member or as sole director. We suggest that it might be more logical in the circumstances that the power should be exercisable in the name of the sole member.

2. Notice of Appointment

We consider that notice of the appointment or its revocation should be filed at the Companies Registry, in a prescribed form, prior to the appointment being "activated", for the following reasons:-

- i) a prescribed form of appointment, which we would expect to refer to or contain relevant wording of Section 153A(6), would ensure that the appointor was fully aware of the purpose, and that it must comply with the section;
- ii) the filing of a prescribed form in advance would preclude concerns or challenges as to its validity;
- iii) the filing of a prescribed form in advance should materially shorten the time before which the reserve director could start to act effectively as a director: that is surely an important element of the arrangement.

3. Notice of Appointment being activated

If a notice of appointment has been filed, in accordance with our above proposal, before it is activated, we further suggest that a notice of its activation should also be filed. That would in fact be appropriate anyway.

4. Number of Members Reduced to Zero

We venture to question whether the number of members is reduced to zero by the death of a sole member. Certainly the share(s) cannot be voted or transferred pending the registration of the grant of administration, but the shares continue to exist and we would have thought that at least in extreme circumstances the court would be likely to give at least qualified recognisance to the interest and contingent rights of the personal representatives before the grant of administration. We suggest that the proposed reference to the number of members being reduced to zero be changed to reference to there being no member for the time being capable of acting as such.

5. Registration of Grant

It is unlikely that a reserve director will be appointed in all relevant cases. While we accept that granting rights to personal representatives prior to the grant of administration would involve review of statutory law other than the Companies Ordinance, we observe that the point made in our original submission about the legal difficulty of registering the grant with a company that has no director has not been addressed. We consider that the proposed amendments of the Companies Ordinance on single member/director companies should provide for that.

6. Other points

We accept your other comments so far as concerns the present Bill.

However, we consider that the comments in our original submission on Authorisation of electronic form of publicity and on Share repurchases have merit. We recommend that they are separately considered by the SCCLP.

We also consider that our comments as to the inadequacy of current procedures for the grant of administration should be the subject of review. This would be in the interests of all parties; it would surely not be difficult to establish provisions under which the fiscal interests of the Estate Duty Office are adequately protected.

Yours faithfully,



Kenneth Ng
Chairman
Legal Committee
Hong Kong General Chamber of Commerce

c.c. Clerk to Bills Committee
(Attn: Mrs Mary Tang)