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香港信託人公會

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Companies Bill Team  
Financial Services Branch  
Financial Services and the Treasury Bureau  
15/F Queensway Government Offices  
66 Queensway  
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6 August 2010

Dear Sir

### **Submission on the Draft Companies Bill – Second Phase Consultation**

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We refer to your letter dated 10 May 2010 to our Chairman, Ms Carolyn Butler, inviting the Hong Kong Trustees Association (“HKTA”) to comment on the second phase of the Companies Ordinance Rewrite.

We thank you for the opportunity to participate in this consultation. HKTA has reviewed the consultation documents.

We only wish to comment directly on three aspects of the draft Companies Bill as they are most relevant to trustees, being the proposals relating to:

- Company Formation and Related Matters, and Re-registration of Companies (Part 3), and
- Investigations and Enquiries (Part 19).

#### **PART 3: COMPANY FORMATION AND RELATED MATTERS, and RE-REGISTRATION OF COMPANY**

1. In the context of company formation and registration, we would also like to put forward a proposal for the government to consider allowing for corporate redomiciliation/ migration. This proposal has previously been put forward by the HKTA in our 24 March 2010 submission on phase 1 of the consultation.
2. Corporate redomicile is permissible in many countries including but not limited to the Ireland, Switzerland, Isle of Man, Jersey, the BVI and Cayman Islands. For corporate migration to operate, corporate redomicile must be permissible under the laws of the jurisdiction of incorporation as well as the jurisdiction to which the company wishes to move.
3. Allowing for non-Hong Kong companies to redomicile to Hong Kong will make Hong Kong a more competitive jurisdiction and reduce cost for maintaining corporate structure.
4. We would once again recommend for the government to consider this proposal.

## **PART 19: INVESTIGATIONS AND ENQUIRIES**

### **Proposal to extend investigatory powers to non-Hong Kong companies**

#### **The Relevant Draft Clauses**

5. Section 19.2 of the Consultation Draft of the Companies Bill (“CB”) defines a company to include
- (i) non-Hong Kong company;
  - (ii) a company incorporated outside Hong Kong that –
    - (A) does business in Hong Kong; but
    - (B) does not have a place of business in Hong Kong.

Section 19.4 allows the court or the financial secretary to appoint inspectors to investigate into such companies. Section 19.9 empowers the inspector to address his enquiries to the company or its officer, an agent of the company, and any person whom the inspector has reasonable grounds to believe to be in possession of records or documents or information relevant to the investigation.

#### **Comments**

6. We understand that this is a ‘last resort’ power to supplement the investigatory powers that other regulators, e.g. the Securities and Futures Commission, already process.
7. In most cases, the investigation and enquiry power proposed under the CB would not cause concerns. However, we question how it may be enforced against companies that do not have a place of business in Hong Kong. More particularly, where a trustee in Hong Kong is in possession of part of the records or information relevant to a non-Hong Kong company, we would like to seek further guidance as to how and to what extent it should comply with an inspector’s request, keeping in mind that (1) the trustee has fiduciary duties and owes a duty of confidentiality to its clients, (2) the trustee may not necessarily know the purpose of the investigation, and (3) the records in Hong Kong may not provide a complete or true picture of the affairs of the non-Hong Kong company. There are safeguards to authorised institutions in section 19.9(3) of the CB; these safeguards should extend to trustees.

#### **GENERAL COMMENTS ON THE PROPOSALS SET OUT IN THE SECOND PHASE CONSULTATION PAPER**

8. We are supportive of the following proposals:
- That listed and unlisted companies will not be required to prepare directors’ remuneration reports under the CB; for this might have been too onerous for unlisted companies in terms of compliance costs.
  - That a company may authorise any person as its attorney to execute a deed or other documents on its behalf,
  - That a company may redenominated its share capital from one currency to another,
  - To introduce court-free procedure for reduction of capital/ share buy back, and
  - To introduce court-free statutory amalgamation procedures.

9. We are neutral on the other proposals set out in the second phase consultation.

We thank you for giving us the opportunity to participate in this consultation.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Carolyn Butler', with a stylized flourish at the end.

Carolyn Butler  
Chairman  
Hong Kong Trustees' Association