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Secretary for Financial Services and the Treasury By Fax (2865 6778) and By Post
Financial Services and the Treasury Bureau
(Attn: Mr Alan LO, PAS(FS)4) 1 November 2004
18/F, Tower 1
Admiralty Centre
18 Harcourt Road
Hong Kong

Dear Mr LO

Companies (Amendment) Bill 2004

I am scrutinising the legal and drafting aspects of the Bill and have the following comments:

1. Section 1 of the 23rd Schedule limits the scope of interpretation for the terms “parent company”, “parent undertaking”, “shares” and “undertaking” to “for the purposes of the provisions specified under section 2B(3) of this Ordinance and this Schedule”. However, “shares” and “undertaking” are further defined to be “construed for the purposes of the provisions specified under section 2B(3) of this Ordinance” only. Please clarify the inconsistency.

2. Section 2 of the 23rd Schedule specifies the criteria for determining the relationship between (a) “a parent undertaking” and (b) “a subsidiary undertaking which is a body corporate” or “a subsidiary which is not a body corporate”. One of the criteria is the voting power/voting rights held by a parent undertaking in a subsidiary undertaking.

While the term “voting rights (表決權)” held by a parent undertaking in a subsidiary undertaking which is not a body corporate is defined in section 3(1) of the 23rd Schedule, “voting power (表決權)” held by a parent undertaking in a subsidiary undertaking which is a body corporate is not defined. Please define the meaning of “voting power (表決權)” referred to in section 2(4) of the Ordinance.

3. Section 3(3) of the 23rd Schedule states that the voting rights in an undertaking referred to in section (1) shall be reduced by any rights held by the

undertaking itself. The voting rights in an undertaking referred to in section 3(1) are construed as “the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters”. What is the meaning of “any rights held by the undertaking itself”? Are the “rights held by the undertaking itself” of the same type as “the voting rights referred to in section 3(1)” in order for them to be reducible under section 3(3)?

4. Section 7 of the 23rd Schedule stipulates that for the purposes of this Schedule, rights shall be treated as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence. The Chinese text of “the rights exercisable with his concurrence” is “有關權利只可與另一人共同行使的情況下行使”. Are these rights legal rights jointly exercisable by both parties? If the answer is in the affirmative, are these two parties the joint legal owners of the shares?

5. Consequential amendments in Cap 1

As “Financial Secretary” is not mentioned in section 126(2) of the Companies Ordinance, should the reference to this section be deleted?

6. I enclose my comments on the Chinese text of section 128(2)(a).

It is appreciated that your reply in both Chinese and English could reach us by close of play, 5 November 2004.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser

c.c. DoJ (Attn: Mr K F CHENG, SALD
Mr Allen LAI, SGC)

128 | 控股公司帳目內對附屬公司的名稱及成立
為法團的地方的陳述，以及控股公司在
附屬公司中所持股份的詳情



△ 公司帳目須就附屬公司列明詳情 ✓

大會上提交公司省覽的公司帳目中，或在該帳目的附註中，或在附錄於該帳目的陳述書中，就每間附屬公司述明——

↑ 或設立附屬公司 ✓

- (a) 附屬公司的名稱；
- (b) 附屬公司成立為法團所在的國家；及
- (c) 就公司所持有附屬公司的每一類別的股份而言，該類別股份的名稱，以及所持股份佔該類別已發行股份的面值的比例。

203 (1) 除本條條文另有規定外，公司在其財政年度終結時如有附屬公司，須於在大會上提交公司省覽的公司帳目中，或在附錄於該帳目的陳述書中，就每間附屬公司列明下述詳情——

- (a) 附屬公司的名稱；
- (b) 附屬公司成立為法團所在的國家；
- (c) 就公司所持有附屬公司的每一類別的股份而言，該類別股份的名稱，以及所持股份佔該類別已發行股份的面值的比例；及
- (d) 就公司所持股份佔某類別已發行股份的面值的比例而言，公司的附屬公司所持有的股份或由代人代公司的附屬公司所持有的股份所佔的數量(如有的話)，以及公司本身所持有的股份或由代人代公司所持有的股份所佔的數量(如有的話)。

□ (a) 為決定某屬法人團體的企業(“前者”)是否另一企業(“後者”)的附屬公司，前者的股份如憑藉第 2(4)、(5)、(6) 及 (7) 條會被視為由後者持有，或會被視為並非由後者持有，則前者的股份即被視為由後者持有，或(視屬何情況而定)並非由後者持有；及

(視屬情況而定)

(2) 就第 (1) 款而言——

II > (a) 為決定某法大團體是否另一法大團體的附屬公司，首述的法大團體的股份如憑藉第 2(4) 至 (7) 條會被視為由該另一法人團體持有，或會被視為並非由該另一法人團體持有，則首述的法人團體的股份即被視為由該另一法人團體持有，或(視屬何情況而定)並非由該另一法大團體持有；及