

**Companies (Amendment) Bill 2004  
Administration's Responses to the Submissions from**

**(a) The Chinese General Chamber of Commerce**

|   | <b>Summary of Comments<sup>1</sup></b>   | <b>Responses</b>   |
|---|--|--|
| 1 | The Chamber supports the proposals in the Bill. The proposals are necessary to better reflect the financial position of the companies thereby enhancing the corporate governance in Hong Kong.   | We note the general support for the proposals in the Bill, which will enhance the quality of financial reporting of companies and thus the corporate governance.   |
| 2 | The proposals will have little impact on Hong Kong group companies. However, since the accounting standards in the Mainland may differ from those in Hong Kong, there may be practical difficulties to prepare group accounts involving Mainland entities. | We do not envisage that the proposals will give rise to practical difficulties in the preparation of group accounts in relation to Mainland subsidiary undertakings of Hong Kong incorporated parent companies. The changes introduced by the proposals relate primarily to the format of presentation, instead of the content or amount of the disclosure in the accounts. This is because, notwithstanding the present requirements in the Companies Ordinance (CO, Cap. 32), Hong Kong incorporated parent companies are already required under the Hong Kong Accounting Standard (HKAS) <sup>2</sup> to disclose the financial information of their subsidiary |

<sup>1</sup> For details of the comments, please refer to the original submissions from the relevant persons or organizations.

<sup>2</sup> The Hong Kong Institute of Certified Public Accountants is empowered, pursuant to section 18A of the Professional Accountants Ordinance (Cap. 50), to issue accounting standards required to be observed, maintained or otherwise applied by any certified public accountants. The relevant accounting standard refers to HKAS 27 "Consolidated and Separate Financial Statements". The definition of "subsidiary" by HKAS 27 is equivalent to that in the International Accounting Standard (IAS) 27 "Consolidated and Separate Financial Statements".

|  | Summary of Comments <sup>1</sup> | Responses   |
|--|----------------------------------|---|
|  |                                  | undertakings (formed in any place including the Mainland) in the form of “notes to accounts”. In this light, the proposed legislative amendments should not pose additional compliance difficulties vis-à-vis the <i>status quo</i> . |

**(b) Mr. David Webb**

|   | Summary of Comments   | Responses  |
|---|---|--|
| 1 | No objection to the approach taken in the Bill. The convergence with IASs allows investors and analysts to compare accounts of companies from different jurisdictions without time-consuming adjustments, and reduces the accounting costs of multi-national groups.                          | We note the general support for the proposals in the Bill, which is aimed to align the definition of “subsidiary” in the CO more closely with that adopted by IASs. According to the Hong Kong Institute of Certified Public Accountants, Hong Kong Financial Reporting Standards (which include HKASs) will be fully converged with the International Financial Reporting Standards (which include IASs) in all material aspects with effect from 1 January 2005. |
| 2 | It would be better in the long-run to remove any areas of overlap or repetition between HKAS and the law. The areas of overlap between the law and HKASs can be replaced in the law with a statutory obligation to conform to HKASs (subject to the “true and fair view override” provision). | Where necessary, we will consider any appropriate amendments to other accounting provisions in the CO in the future review of the Ordinance.   |

**(c) The Securities and Futures Commission (SFC)**

|   | Summary of Comments                         | Responses  |
|---|---|--|
| 1 | The SFC expresses its support for the Bill. | We note the general support for the proposals in the Bill. |

**(d) The Association of Chartered Certified Accountants (Hong Kong)**

|   | Summary of Comments   | Responses   |
|---|---|---|
| 1 | <b>Proposed section 124(2A)(a):</b> The condition relating to “severe long term restrictions that hinder the exercise of the rights of the holding company over the assets or management of the subsidiary” for exclusion from group accounts has been removed from IASs. It was considered that such a restriction on the transfer of funds from the subsidiary to the parent does not preclude control. | The proposed section 124(2A)(a) is modelled on the existing section 229(3)(a) of the UK Companies Act 1985. However, we note that the International Accounting Standards Board (IASB) had decided to remove this condition from the latest IAS 27 “Consolidated and Separate Financial Statements” which was promulgated in December 2003, as the Board considered that such circumstances might not preclude control over a subsidiary. In the light of the latest development, we would consider proposing a Committee Stage Amendment (CSA) to withdraw this proposed provision from the Bill. |
| 2 | <b>Proposed section 124(2A)(b):</b> It is clearly spelt out in the Basis for Conclusions  | The proposed section 124(2A)(b) is modelled on the previous section 229(3)(c) of the UK Companies Act 1985, which has   |

|   | <b>Summary of Comments</b>  | <b>Responses</b>  |
|---|---|---|
|   | <p>accompanying IAS 27 that a subsidiary can be excluded from consolidation if “there is evidence that the subsidiary is acquired with the intention to dispose of it within twelve months and that management is actively seeking a buyer”. However, under the proposed section 124(2A)(b), the scope for exclusion of a subsidiary due to a view to subsequent resale is less clear than that under the IAS.</p>  | <p>recently been amended by the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 in November 2004. We would review this provision and consider proposing a CSA if necessary, in the light of the latest legislative change in the UK.</p>   |
| 3 | <p><b>Section 2 of the proposed Twenty-third Schedule:</b> We note certain inconsistencies in the wording of section 2 of the proposed Twenty-third Schedule regarding the definition of a “subsidiary undertaking” as compared to IAS 27. Under the IAS, the definition is specifically related to the power of governing the financial and operating policies of an entity in determining whether control exists, while under section 2(1)(c) the scope of such power is extended to having a “dominant influence over the subsidiary undertaking”.</p> | <p>We have made reference to the UK Companies Act 1985 in preparing the legislative provisions. The expression “the right to exercise dominant influence” in section 2(1)(c) of the proposed Twenty-third Schedule is defined in section 5(a) under the same proposed Schedule as “a right to give directions with respect to the operating and financial policies of” the subsidiary undertaking. This is modelled on paragraph 4(1) of Schedule 10A to the UK Companies Act 1985. We consider that the current drafting is sufficient in reflecting our intention to align the definition of “subsidiary” in the CO more closely with IAS 27.</p> |

**(e) The Standing Committee on Company Law Reform (SCCLR)**

|   | <b>Summary of Comments</b>             | <b>Responses</b> |
|---|--|------------------|
| 1 | The SCCLR has no comments on the Bill. | Noted.           |

**(f) The Hong Kong Institute of Company Secretaries**

|   | <b>Summary of Comments</b>  | <b>Responses</b>   |
|---|---|--|
| 1 | The Institute fully supports the legislative efforts in enhancing corporate governance as exemplified by the proposed amendments, in particular, to modify the meaning of the term “subsidiary” so as to align it more closely with that contained in the IASs and to adopt the “true and fair view override” provisions. | We note the general support for the proposals in the Bill, which will enhance the quality of financial reporting of companies and thus the corporate governance. |

**Financial Services and the Treasury Bureau  
December 2004**