

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

(a) The Association of International Accountants (Hong Kong Branch)

	Summary of Comments ¹	Responses
1	We agree in principle that the amendments to the Companies Ordinance (CO, Cap. 50) serve to make financial statements prepared in accordance with the CO more comparable to those prepared in accordance with International Accounting Standards (IASs).	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	We do not see the need for introducing a new term of "undertaking" in the new Twenty-third Schedule. The term "undertaking" is said to include body corporates, partnerships, and other unincorporated associations. These are not separate and distinct legal entities and, if a company becomes a member or a partner in such undertakings in its own name, the undertakings are legally parts of the company. If a company is involved in such undertakings through a nominee, the legal status is the same unless the beneficial interest of the company is deliberately concealed with fraudulent intentions.	Section 2(4) of the CO excludes a partnership or an unincorporated body from becoming a "subsidiary" of a company, even though the company may have control of the majority of the voting power or the composition of the board of directors of the partnership or unincorporated body. Our proposed amendment in the Bill will extend the scope of the "subsidiary" to a partnership or an unincorporated body such that the accounts of the partnership or unincorporated body will be consolidated in the group accounts, when control is evident in the investment or interest of a company in a partnership or an unincorporated body. This proposal is drawn up with reference to section 259(1) of the United Kingdom (UK) Companies Act 1985. IAS 27 also defines a

¹ For details of the comments, please refer to the original submissions from the relevant organizations.

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		subsidiary as “an entity, including an unincorporated entity such as a partnership that is controlled by another entity”.
3	There may be a potential anomaly relating to the interface of section 266 of the CO with section 50 of the Bankruptcy Ordinance (BO, Cap. 6), although this may not directly affect the currently proposed amendments in the Bill. For the purpose of determining whether a person shall be an associate person of another person in relation to “fraudulent preference” ² in company winding-up, section 266B of the CO adopts the tests in section 51B ³ of the BO. The result is that a subsidiary of a debtor company is an associate by virtue of section 51B of the BO since the debtor company is in control of it, but a holding or parent company of the debtor company is not an associate as the debtor company is not the one in control.	We agree that the issue is outside the purpose of this Bill, and will review the matter in future amendment exercises of the concerned Ordinances.

(b) The DTC Association

² Under section 266(1) of the CO, any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding up which, had it been made or done by or against an individual within 6 months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly.

³ In determining whether a person is an “associate person” for the relevant provisions relating to “fraudulent preference” in BO and CO, section 51B(6) of the BO states that a company is an associate of a debtor if that debtor has control of it or if the debtor and persons who are his associates together have control of it.

	Summary of Comments	Responses
1	The Association members have not expressed any views on the subject.	Noted.

(c) W. H. Lam & Company

	Summary of Comments	Responses
1	We support the amendments in the Bill save the proposed section 124(2A)(b). Paragraph 16 of HKAS 27 “Consolidated and Separate Financial Statements” states that a subsidiary shall be excluded from consolidation when there is evidence that (a) control is intended to be temporary because the subsidiary is <u>acquired</u> and held exclusively with a view to its disposal <u>within twelve months from acquisition</u> and (b) <u>management is actively seeking a buyer</u> . The words underlined are the points that have not been mentioned in the proposed section 124(2A)(b).	We note the general support for the proposals in the Bill. The proposed section 124(2A)(b) is modelled on the previous section 229(3)(c) of the UK Companies Act 1985, which has recently been amended by the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 in November 2004. We would review the provision in the light of the legislative change in the UK.

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