

LEGISLATIVE COUNCIL BRIEF
COMPANIES (AMENDMENT) BILL 2004

INTRODUCTION

At the meeting of the Executive Council on 28 September 2004, the Council ADVISED and the Chief Executive ORDERED that the Companies (Amendment) Bill 2004, at **Annex A**, should be re-introduced into the Legislative Council to amend the definition of the term “subsidiary” for the purposes of group accounts to make it more closely aligned with the International Accounting Standards (IASs).

JUSTIFICATIONS

2. Section 124 of the Companies Ordinance (CO) requires a company having subsidiaries to lay before the company in general meeting accounts dealing with the state of affairs and the profit and loss of the company itself and its subsidiaries. These accounts are known as group accounts. The definition of the term “subsidiary” in section 2(4)¹ which applies to accounting and other provisions in the CO is narrower than that adopted in the IASs². We consider it necessary to amend the statutory definition for the purposes of group accounts to make it more closely aligned with the IASs. This would ensure that under the law, the group

¹ The term “subsidiary” is defined in section 2(4), which deems the relationship between a holding company and its subsidiary to be one of the control of the composition of the board of directors of the subsidiary, control of more than half of the voting power of the subsidiary or the holding of more than half of the issued share capital of the subsidiary.

² The Hong Kong Institute of Certified Public Accountants (HKICPA) is responsible for issuing the Hong Kong Accounting Standards (HKASs), which govern the preparation and presentation of accounts (including group accounts). Since 1993, it has been the HKICPA’s policy to harmonise HKASs (previously called “Statements of Standard Accounting Practice (SSAPs)”) with the IASs, which are the internationally recognised set of accounting standards. The HKICPA issued HKAS 27 “Consolidated and Separate Financial Statements” in March 2004 to apply in the preparation and presentation of group accounts for accounting periods beginning on or after 1 January 2005. HKAS 27 is based on, and generally consistent with, IAS 27 “Consolidated and Separate Financial Statements” except that HKAS 27 currently accommodates the CO’s definition of “subsidiary” for statutory reporting purposes. In both IAS 27 and HKAS 27, a subsidiary is defined as “an entity that is controlled by another entity”, where the control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

accounts would better reflect the financial position of the company. The definition of “subsidiary” for purposes other than the preparation of group accounts would not be affected. We have formulated our legislative proposals with reference to the relevant provisions of the UK. These proposals would have no effect on the provisions for loss set off under section 19C(4) of the Inland Revenue Ordinance, and would not affect the operation of the provisions of the Estate Duty Ordinance. Given the time taken for the enactment of the Bill and the need to allow time for companies incorporated in Hong Kong to prepare for the new provisions, we expect the proposed definition of “subsidiary” for the purposes of group accounts will come into effect in 2005 at the earliest.

3. We note that the proposed definition of “subsidiary” for the purposes of group accounts might have an impact on the development of the financial market, for example, the asset securitisation industry. In this connection, we would continue to watch international developments, in particular, in relation to the IASs closely. Where necessary and justified, refinements to the Bill will be considered before its enactment to ensure that our market development and corporate governance needs are adequately catered for and that the disclosure regime is in line with international standards and practices.

THE BILL

4. The main provisions are as follows –

- (a) In relation to the definition of “subsidiary” for the purposes of group accounts, **clause 2** and the new Twenty-third Schedule added under **clause 18** introduce new terms of “subsidiary undertaking”, “parent company” and “parent undertaking”. The term “undertaking” includes body corporates, partnerships and other unincorporated associations. This is an important improvement to the existing provision where a subsidiary or a holding company must be a body corporate. Without this amendment, assets and liabilities of partnerships and unincorporated associations within a group can be kept out of the group accounts, even when substantially all the risks and rewards are retained in the group. The “right to exercise a dominant influence over another undertaking” (defined as the right to give directions with respect to the operating and financial policies of that other undertaking which its

directors will be obliged to comply with) would be added to the existing tests of determining the existence of a parent/subsidiary relationship;

- (b) **Clauses 3 and 5** introduce “true and fair view override” provisions to the effect that if compliance with the requirements of CO does not result in a true and fair view³ of the state of affairs of the company or the group, the directors should depart from these requirements to the extent necessary to give a true and fair view. In most cases, a departure is expected to be necessitated only when required by the Hong Kong Accounting Standards to the extent that these differ from the CO. Additional information in order to present a true and fair view should be given in the accounts or in a statement annexed to the accounts. Particulars of any such departure, the reasons for it and its effect should be given in the accounts or statement. The “true and fair view override” provisions will cater for the evolving nature of accounting reporting requirements. They would negate attempts to find ways around the standards or the law to avoid inclusion of vehicles, such as special purpose entities and other off-balance sheet non-subsidiaries, into the group accounts; and
- (c) **Clauses 3 and 5** also repeal the Financial Secretary’s existing powers under sections 123(4) and 126(3) to modify the requirements of the CO as to the matters to be stated in a company’s accounts or group accounts, which would no longer be appropriate when the “true and fair view override” provisions are in place.

Apart from some textual amendments of minor nature necessitated by the passage of time and the fine-tuning of

³ Section 123 provides that the balance sheet and profit and loss account (“the accounts”) of a company shall give a true and fair view of the state of affairs and profit or loss of the company. So far as applicable, the accounts shall comply with the Tenth Schedule to the CO. Compliance with the Tenth Schedule is without prejudice to the requirement to give a true and fair view or any other requirements of the CO unless expressly provided. The Financial Secretary (FS) may modify any requirement of the CO in relation to a particular company as to the matters to be stated in the accounts, except the requirement to give a true and fair view, for adapting them to the circumstances of the company (section 123(4)). Similarly, section 126 provides that the group accounts of a company shall give a true and fair view of the state of affairs and profit or loss of the company and the subsidiaries. So far as applicable, the group accounts shall comply with the Tenth Schedule. The FS may modify the requirements of the Tenth Schedule in relation to the company for adapting them to the circumstances of the company (section 126(3)). The CO does not contain a definition of the term “true and fair view”.

drafting, the Bill at **Annex A** is the same in substance as the previous relevant part of the Bill introduced into the Legislative Council on 25 June 2003. A mark-up copy of the Bill showing these amendments is at **Annex B**.

LEGISLATIVE TIMETABLE

5. The legislative timetable is as follows –

Publication in the Gazette	8 October 2004
First Reading and commencement of Second Reading debate	13 October 2004
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

6. The proposals in the Bill have economic implications as set out at **Annex C**. They are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the current binding effect of the existing provisions of the CO. They have no financial and civil service, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

7. Public consultation had been conducted before the introduction of the Bill into the Legislative Council during its second term. Details of consultation are recapitulated in the paragraphs 8 and 9 below.

8. In April 2003, we consulted the Legislative Council Panel on Financial Affairs on the proposed legislative amendments. Members of the Panel did not object to the proposals.

9. The Bill has been prepared in consultation with the Hong Kong Institute of Certified Public Accountants. In April 2003, we invited comments from the Hong Kong General Chamber of Commerce, Chinese

General Chamber of Commerce, Hong Kong Mortgage Corporation Limited, and Hong Kong Capital Markets Association. The Hong Kong General Chamber of Commerce has no objection to the proposals. The Chinese General Chamber of Commerce supports the proposals. Both the Hong Kong Mortgage Corporation Limited and Hong Kong Capital Markets Association are concerned about the possible impact of the proposals on the asset securitisation market in Hong Kong, in particular, whether we would be competitively disadvantaged when compared with other financial centres. We have all along been exchanging views with the industry and appreciate its concerns. As indicated in paragraph 3 above, we would continue to keep a close watch on international developments and consider refining our regime when necessary.

PUBLICITY

10. A press release will be issued on 6 October 2004. A spokesman will be available to handle enquiries.

BACKGROUND

11. The proposal contained in the Companies (Amendment) Bill 2004 was originally a part of the Companies (Amendment) Bill 2003. The latter was passed in July 2004 with the proposal removed as the Bills Committee concerned did not have enough time to scrutinize it within the second term of office of the Legislative Council. Pursuant to section 9(4) of the Legislative Council Ordinance, the consideration of any bill is to lapse at the end of a term of office of the Legislative Council. There is therefore a need to re-introduce the proposal into the Legislative Council vide the Companies (Amendment) Bill 2004 at the earliest possible juncture in the 2004/05 legislative session.

ENQUIRIES

12. Enquiries on this brief should be addressed to Mr Alan Lo, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (telephone number: 2528 9016).

**Financial Services Branch
Financial Services and the Treasury Bureau
6 October 2004**

COMPANIES (AMENDMENT) BILL 2004

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A BILL

To

Amend the Companies Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2004.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Section added

The Companies Ordinance (Cap. 32) is amended by adding -

"2B. Construction of references to parent company, etc.

(1) A reference in this Ordinance to parent company, parent undertaking or subsidiary undertaking shall be construed in accordance with the Twenty-third Schedule.

(2) A reference in a provision specified under subsection (3) for the purposes of this subsection -

(a) to a holding company shall be deemed to include a parent company;

(b) to a subsidiary shall be deemed to include a subsidiary undertaking; and

(c) to shares or an undertaking shall be construed in accordance with the Twenty-third Schedule.

(3) The provisions specified for the purposes of subsection (2) are sections 123, 124, 125, 126, 127, 128, 129A, 129D, 133, 140, 141, 161, 163B and 163D and the Second Schedule, the Third Schedule, the Fourth Schedule and the Tenth Schedule.

(4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend subsection (3)."

3. General provisions as to contents and form of accounts

Section 123(4) is repealed and the following substituted -

"(4) Without affecting the generality of subsections (2) and (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to those accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company, additional information as may be necessary to give a true and fair view thereof shall be given in the accounts or statement, as the case may require.

(4A) Where compliance with any of the provisions referred to in subsections (2), (3) and (4) is inconsistent

with the requirement to give a true and fair view of the state of affairs or the profit or loss of a company, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in the company's balance sheet and profit and loss account or in a statement annexed to those accounts."

4. Obligation to lay group accounts before holding company

Section 124 is amended by adding -

"(2A) Without prejudice to subsection (2) but subject to subsection (2B), a subsidiary may be excluded from the group accounts if -

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the holding company over the assets or management of the subsidiary; or
- (b) the interest of the holding company is held exclusively with a view to subsequent resale and the subsidiary has not been previously included in the group accounts prepared by the holding company.

(2B) The references in subsection (2A) to the rights of the holding company and the interest of the holding company

shall be construed as references to, respectively, the rights and interest held by or attributed to the company for the purposes of section 2 of the Twenty-third Schedule in the absence of which the company would not be a parent company."

5. Contents of group accounts

Section 126 is amended -

(a) in subsection (3), by repealing everything after "information" and substituting a full stop;

(b) by adding -

"(4) Without affecting the generality of subsection (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's group accounts or in a statement annexed to the group accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the holding company and its subsidiaries, additional information as may be necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require.

(5) Where compliance with any of the provisions referred to in subsections (3) and

(4) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of a holding company and its subsidiaries, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in a statement annexed to the company's group accounts."

6. Financial year of holding company and subsidiary

Section 127(2) is amended by adding "which is a company for the purposes of this Ordinance" after "a holding company's subsidiary".

7. Particulars to be shown in company's accounts in relation to subsidiaries

Section 128 is amended -

(a) in subsection (1)(b), by adding "or established" after "incorporated";

(b) by repealing subsection (2)(a) and substituting -

"(a) shares of an undertaking which is a body corporate shall be treated as being held, or as not being held, by another

undertaking if they would, by virtue of section 2(4), (5), (6) and (7), be treated as being held or, as the case may be, as not being held by that other undertaking for the purpose of determining whether the first-mentioned undertaking is its subsidiary; and";

(c) by repealing subsection (3) and substituting -

"(3) Subsection (1) shall not require the disclosure of information with respect to an undertaking which -

(a) is the subsidiary of another undertaking; and

(b) is established under the laws of a place outside Hong Kong or carries on business outside Hong Kong,

if -

(c) the disclosure would, in the opinion of the directors of that other undertaking, be harmful to the business of that other undertaking or of any of its subsidiaries; and

(d) the Financial Secretary agrees that the information need not be disclosed."

8. Section substituted

Section 129A is repealed and the following substituted -

"129A. Particulars to be shown in subsidiary company's accounts in relation to its ultimate parent undertaking

(1) Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another undertaking, there shall be stated in, or in a note on, or statement annexed to, the company's accounts laid before it in general meeting the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking and, if known to them, the country in which it is incorporated or established.

(2) Subsection (1) shall not require the disclosure by a company which carries on business outside Hong Kong of information with respect to the undertaking regarded by the directors as being the company's ultimate parent undertaking if -

(a) the disclosure would, in their opinion, be harmful to the business of that parent undertaking or of the company or any other of that parent undertaking's subsidiaries; and

- (b) the Financial Secretary agrees that the information need not be disclosed."

9. Directors' report to be attached to balance sheet

Section 129D is amended -

- (a) in subsection (3)(h), by repealing ", if" and substituting ", the company";
- (b) in subsection (6) -
 - (i) by repealing "body corporate" and substituting "undertaking";
 - (ii) by repealing "body" and substituting "undertaking".

10. Disqualifications for appointment as auditor

Section 140(2)(d) is repealed and the following substituted -

- "(d) a person who is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking which is -
- (i) the subsidiary of the company;
 - (ii) the parent undertaking of the company; or
 - (iii) a subsidiary of the company's parent undertaking,
- or would be so disqualified if the undertaking were a company,".

11. Particulars in accounts of directors' emoluments, pensions, etc.

Section 161(9)(a) is amended by repealing "body corporate" where it twice appears and substituting "undertaking".

12. Duty of director or past director to disclose payment for loss of office, etc., made in connexion with transfer of shares in company

Section 163B(1)(b) is repealed and the following substituted -

"(b) an offer made by or on behalf of some other undertaking with a view to the company becoming its subsidiary or a subsidiary of its parent undertaking;".

13. Power to amend requirements as to accounts, Schedules, tables, forms and fees

Section 360(5) is amended by adding "or Twenty-third" after "Sixteenth".

14. Form of Statement in lieu of Prospectus to be delivered to Registrar by a Private Company on becoming a Public Company and Reports to be set out therein

The Second Schedule is amended -

(a) by repealing "[s. 30]" and substituting "[ss. 2B & 30]";

(b) in Part II, in paragraph 2 -

- (i) in sub-paragraph (1), by repealing "shares in a body corporate" and substituting "shares in an undertaking";
 - (ii) by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (iii) in sub-paragraph (3), by repealing "body corporate's" wherever it appears and substituting "undertaking's";
- (c) in Part III -
- (i) in paragraph 4 -
 - (A) by repealing "a body corporate" and substituting "an undertaking";
 - (B) by repealing "body corporate" and substituting "undertaking";
 - (ii) in paragraph 6, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking".

15. Matters to be Specified in Prospectus and Reports to be set out therein

The Third Schedule is amended -

- (a) by repealing "[ss. 38 & 342]" and substituting "[ss. 2B, 38, 38A, 38D, 42, 342, 342A, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]";
- (b) in Part II, in paragraph 33, by repealing "body corporate" wherever it appears and substituting "undertaking";
- (c) in Part III -
 - (i) in paragraph 43, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking";
 - (ii) in paragraph 46 -
 - (A) in sub-paragraph (b), by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking";
 - (B) in sub-paragraph (c)(i), by repealing "holding company or a subsidiary of the company's holding company" and substituting "parent

undertaking or a subsidiary of the
company's parent undertaking".

**16. Form of Statement in lieu of Prospectus
to be delivered to Registrar by a
Company which does not issue a
Prospectus or which does not
go to Allotment on a
Prospectus Issued,
and Reports to be
set out therein**

The Fourth Schedule is amended -

- (a) by repealing "[s. 43]" and substituting "[ss. 2B & 43]";
- (b) in Part II, in paragraph 2 -
 - (i) in sub-paragraph (1), by repealing "a body corporate" and substituting "an undertaking";
 - (ii) by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (iii) in sub-paragraph (3), by repealing "body corporate's" wherever it appears and substituting "undertaking's";
- (c) in Part III -
 - (i) in paragraph 4 -
 - (A) by repealing "a body corporate" and substituting "an undertaking";
 - (B) by repealing "body corporate" and substituting "undertaking";

- (ii) in paragraph 6, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking".

17. Accounts

The Tenth Schedule is amended -

- (a) in the square brackets, by adding "2B," before "48B";

- (b) in Part II -

- (i) in paragraph 18(1) and (5), by repealing "body corporate" wherever it appears and substituting "undertaking";

- (ii) in paragraph 19 -

- (A) by repealing "body corporate" wherever it appears and substituting "undertaking";

- (B) by repealing "bodies corporate" where it twice appears and substituting "undertakings".

18. Twenty-third Schedule added

The following is added -

PARENT AND SUBSIDIARY UNDERTAKINGS

1. **Interpretation**

(1) For the purposes of the provisions specified under section 2B(3) of this Ordinance and this Schedule -

"parent company" (母公司) means a parent undertaking which is a company;

"parent undertaking" (母企業) shall be construed in accordance with section 2;

"shares" (股、股份) shall be construed, for the purposes of the provisions specified under section 2B(3) of this Ordinance, as a reference to -

(a) in relation to an undertaking with a share capital, the allotted shares;

(b) in relation to an undertaking with capital in the form other than share capital, the rights to share in the capital of the undertaking;
and

(c) in relation to an undertaking without any capital, the interest -

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking; or

- (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up;

"undertaking" (企業), in relation to the provisions specified under section 2B(3) of this Ordinance, includes -

- (a) a body corporate or corporation;
- (b) a partnership;
- (c) an unincorporated body carrying on a trade or business, whether for profit or not.

(2) In construing any references to an undertaking which is not a company for the purposes of this Ordinance, other expressions appropriate to companies shall be construed, in relation to that undertaking, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

2. Parent undertaking and subsidiary undertaking

(1) An undertaking is a parent undertaking ("parent undertaking") in relation to another undertaking ("subsidiary undertaking") if -

- (a) the subsidiary undertaking is a body corporate and is a subsidiary of the parent undertaking by virtue of section 2(4), (5), (6) and (7) of this Ordinance;

- (b) the subsidiary undertaking is not a body corporate and the parent undertaking -
 - (i) holds a majority of the voting rights in the subsidiary undertaking;
 - (ii) is a member of the subsidiary undertaking and has the right to appoint or remove a majority of its board of directors; or
 - (iii) is a member of the subsidiary undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the subsidiary undertaking; or
- (c) the parent undertaking has the right to exercise a dominant influence over the subsidiary undertaking by virtue of -
 - (i) the provisions contained in the subsidiary undertaking's memorandum or articles or equivalent constitutional documents; or
 - (ii) a control contract.

(2) For the purposes of subsection (1)(b), an undertaking shall be treated as a member of another undertaking ("the relevant undertaking"), if -

- (a) any of its subsidiary undertakings is a member of the relevant undertaking; or
- (b) any shares in the relevant undertaking are held by a person acting on behalf of the first-mentioned undertaking or any of its subsidiary undertakings.

(3) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

3. Voting rights in undertaking

(1) For the purposes of section 2(1)(b)(i) and (iii), the references to the voting rights in an undertaking shall be construed as references to 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.

(2) For the purposes of subsection (1), where an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the

right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

(3) The voting rights in an undertaking referred to in subsection (1) shall be reduced by any rights held by the undertaking itself.

4. Right to appoint or remove majority of directors

For the purposes of section 2(1)(b)(ii) -

- (a) the reference to the right to appoint or remove a majority of the board of directors shall be construed as a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters;
- (b) an undertaking shall be treated as having the right to appoint to a directorship if -
 - (i) a person's appointment to it follows necessarily from his appointment as a director of the undertaking; or
 - (ii) the directorship is held by the undertaking itself; and
- (c) a right to appoint or remove a directorship which is exercisable only with the consent or

concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

5. Right to exercise dominant influence

For the purposes of section 2(1)(c) -

- (a) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which the directors are, or a majority of the directors is, obliged to comply with whether or not they are for the benefit of that other undertaking; and
- (b) a "control contract" (控制合約) means a contract in writing conferring a right which is -
 - (i) of a kind authorized by the memorandum or articles, or equivalent constitutional documents, of the undertaking in relation to which the right is exercisable; and
 - (ii) permitted by the law under which that undertaking is established.

6. Rights exercisable only in certain circumstances

(1) For the purposes of this Schedule but without prejudice to subsection (2), rights which are exercisable only in certain circumstances shall be taken into account only -

- (a) when the circumstances have arisen, and for so long as they continue to obtain; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

7. Rights held by one person on behalf of another

For the purposes of this Schedule -

- (a) rights held by a person in a fiduciary capacity shall be treated as not held by him;
- (b) rights held by a person as nominee for another shall be treated as held by the other; and
- (c) rights shall be treated as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

**8. Rights attached to shares
by way of security**

Where any rights referred to in this Schedule are attached to shares held by way of security, the rights shall be treated as held by the person providing the security, if -

- (a) apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in accordance with his instructions; and
- (b) the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in his interests.

**9. Rights attributed to parent
undertaking**

(1) For the purposes of section 2, rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in section 7 or 8 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of section 8, rights shall be treated as being exercisable in accordance with the instructions of or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

(4) In this section, "group undertaking" (企業集團), in relation to an undertaking ("relevant undertaking"), means an undertaking which is -

- (a) a parent undertaking or subsidiary undertaking of the relevant undertaking; or
- (b) a subsidiary undertaking of any parent undertaking of the relevant undertaking.

10. Supplementary

References in any provision of sections 7, 8 and 9 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those sections but not rights which by virtue of any such provision are to be treated as not held by him."

19. Transitional provisions

(1) The amendments made by this Ordinance shall not apply to

a company (including a company which is an insurer within the meaning of section 2(1) of the Insurance Companies Ordinance (Cap. 41)) until the start of the company's first financial year beginning after the expiration of the 30 days immediately following the commencement of this section.

(2) For the avoidance of doubt, it is hereby declared that any provision of the principal Ordinance amended by this Ordinance shall, as it is in force from time to time apart from that amendment, apply to and in relation to a company until subsection (1) applies to the company.

Consequential Amendments

Specification of Public Offices

20. Schedule amended

The Specification of Public Offices (Cap. 1 sub. leg. C) is amended, in the Schedule where the Financial Secretary is the specified public office, by repealing "Companies Ordinance (Chapter 32), sections 123(4), 124(2), 126(2) and (3)" and substituting "Companies Ordinance (Chapter 32), sections 124(2), 126(2)".

Insurance Companies Ordinance

21. Accounts and Statements

The Third Schedule to the Insurance Companies Ordinance (Cap. 41) is amended by adding -

"1A. (1) A reference in Part 1, 2, 3 or 4 of this Schedule to parent company or subsidiary undertaking shall be construed in accordance with section 2B of the Companies Ordinance (Cap. 32) as read with the Twenty-third Schedule to that Ordinance.

(2) A reference in a provision specified under subparagraph (3) for the purposes of this subparagraph -

(a) to a holding company shall be deemed to include a parent company; and

(b) to a subsidiary or subsidiary company shall be deemed to include a subsidiary undertaking.

(3) The provisions specified for the purposes of subparagraph (2) are -

(a) paragraph 4(1)(d) and (e)(iii) and (1AD)(f) and (g)(iii) of Part 1 of this Schedule;

(b) paragraph 9(a), (d), (e), (f), (j) and (l) of Part 2 of this Schedule;

(c) the heading, and paragraphs 10, 11 and 12, of Part 3 of this Schedule;

(d) paragraph 16(b)(ii), (d)(i), (e) and (g) of Part 4 of this Schedule."

Explanatory Memorandum

The principal purpose of this Bill is to modify the meaning of the term "subsidiary" in the Companies Ordinance (Cap. 32) ("the principal Ordinance") in order to make the meaning of the term more closely in alignment with the meaning attached to the term in the International Accounting Standards. However, the new meaning will only apply for the purposes of the group accounts of a company. For other purposes, the present meaning of the term "subsidiary" in the principal Ordinance will apply.

2. Clause 2 adds a new section 2B which, as read with the new Twenty-third Schedule at clause 18, specifies the meaning to be attached to the terms "parent company", "parent undertaking" and "subsidiary undertaking" as used in the amendments made to the principal Ordinance by the Bill. It should be noted that new section 2B(3) specifies the provisions of the principal Ordinance to which the new terms are applicable.

3. Clause 3 repeals section 123(4) of the principal Ordinance and substitutes new section 123(4) and (4A). The new section 123(4) and (4A) permits information to be given which is additional to the requirements of the principal Ordinance, or which diverges from those requirements, for the purpose of giving a true and fair view of the state of affairs or the profit or loss of a company. Clause 5 makes a similar amendment to section 126 of the principal Ordinance.

4. Clause 4 adds new section 124(2A) to specify the basis on

which a subsidiary may be excluded from the group accounts of a company.

5. Clause 6 amends section 127(2) of the principal Ordinance to restrict the meaning of a subsidiary to a company because only a company is required to hold a general meeting in compliance with section 111(1) of the principal Ordinance.

6. Clauses 7, 9, 11 and 17 amend the references to a body corporate in sections 128, 129D(6) and 161(9)(a) of and the Tenth Schedule to the principal Ordinance consequent upon the amendment to the meaning of the term "subsidiary".

7. Clause 8 repeals and replaces section 129A of the principal Ordinance to amend the references to a body corporate and holding company to read respectively "undertaking" and "parent undertaking".

8. Clauses 10, 12, 14, 15 and 16 similarly amend the references to a body corporate and holding company in sections 140(2)(d) and 163B(1)(b) of and the Second, Third and Fourth Schedules to the principal Ordinance.

9. Clause 13 is a consequential amendment as a result of the addition of the new Twenty-third Schedule.

10. Clause 18 adds the new Twenty-third Schedule to specify the meaning to be attached to the terms "parent company", "parent undertaking" and "subsidiary undertaking".

11. Clause 19 contains a transitional provision.

12. Clauses 20 and 21 specify the consequential amendments to the

Specification of Public Offices (Cap. 1 sub. leg. C) and the Insurance Companies Ordinance (Cap. 41) necessitated by the amendments to the principal Ordinance.

COMPANIES (AMENDMENT) BILL 2004

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Insurance Companies Ordinance

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A BILL

To

Amend the Companies Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 200~~3~~4.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

21. Section added

The Companies Ordinance (Cap. 32) is amended by adding -

"2B. Construction of references to parent company, etc.

(1) A reference in this Ordinance to parent company, parent undertaking or subsidiary undertaking shall be construed in accordance with the Twenty-third Schedule.

(2) A reference in a provision specified under subsection (3) for the purposes of this subsection -

(a) to a holding company shall be deemed to include a parent company;

(b) to a subsidiary shall be deemed to include a subsidiary undertaking; and

(c) to shares or an undertaking shall be construed in accordance with the Twenty-third Schedule.

(3) The provisions specified for the purposes of subsection (2) are sections 123, 124, 125, 126, 127, 128, 129A, 129D, 133, 140, 141, 161, 163B and 163D and the Second Schedule, the Third Schedule, the Fourth Schedule and the Tenth Schedule.

(4) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend subsection (3)."

32. General provisions as to contents and form of accounts

Section 123(4) is repealed and the following substituted -

"(4) Without affecting the generality of subsections (2) and (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to ~~the~~those accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company, additional information as may be necessary to give a true and fair view thereof shall be given in the accounts or statement, as the case may require.

(4A) Where compliance with any of the provisions referred to in subsections (2), (3) and (4) is inconsistent

with the requirement to give a true and fair view of the state of affairs or the profit or loss of a company, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in the company's balance sheet and profit and loss account or in a statement annexed ~~thereto~~ those accounts."

43. Obligation to lay group accounts before holding company

Section 124 is amended by adding -

"(2A) Without prejudice to subsection (2) but subject to subsection (2B), a subsidiary may be excluded from the group accounts if -

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the holding company over the assets or management of the subsidiary; or
- (b) the interest of the holding company is held exclusively with a view to subsequent resale and the subsidiary has not been previously included in the group accounts prepared by the holding company.

(2B) The references in subsection (2A) to the rights of the holding company and the interest of the holding company

~~are~~ shall be construed as references to, respectively, the rights and interest held by or attributed to the company for the purposes of section 2 of the Twenty-third Schedule in the absence of which the company would not be a parent company."

54. Contents of group accounts

Section 126 is amended -

(a) in subsection (3), by repealing everything after "information" and substituting a full stop;

(b) by adding -

"(4) Without affecting the generality of subsection (3), where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's group accounts or in a statement annexed to the group accounts would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the holding company and its subsidiaries, additional information as may be necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require.

(5) Where compliance with any of the provisions referred to in subsections (3) and

(4) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of a holding company and its subsidiaries, the directors of the company shall depart from those provisions to the extent as may be necessary for the purposes of subsection (1) with the reasons for and particulars and effects of such departure to be given in a statement annexed to the company's group accounts."

65. Financial year of holding company and subsidiary

Section 127(2) is amended by adding "which is a company for the purposes of this Ordinance" after "a holding company's subsidiary".

~~6. Statement in holding company's accounts of identities and places of incorporation or establishment of subsidiaries, and particulars of share holdings therein~~

7. Particulars to be shown in company's accounts in relation to subsidiaries

Section 128 is amended -

- (a) in subsection (1)(b), by adding "or established" after "incorporated";
- (b) by repealing subsection (2)(a) and substituting -

"(a) shares of an undertaking which is a body corporate shall be treated as being held, or as not being held, by another undertaking if they would, by virtue of section 2(4), (5), (6) and (7), be treated as being held or, as the case may be, as not being held by that other undertaking for the purpose of determining whether the first-mentioned undertaking is its subsidiary; and";

(c) by repealing subsection (3) and substituting -

"(3) Subsection (1) shall not require the disclosure of information with respect to an undertaking which -

(a) ~~which~~ is the subsidiary of another undertaking; and

(b) is established under the laws of a place outside Hong Kong or carries on business outside Hong Kong~~;~~

if -

(c) ~~if~~ the disclosure would, in the opinion of the directors of that other undertaking, be harmful to the business of that

other undertaking or of any of its subsidiaries; and

- (d) the Financial Secretary agrees that the information need not be disclosed."

87. Section substituted

Section 129A is repealed and the following substituted -

~~"129A. Statement in subsidiary company's
accounts of name and place of
incorporation or establishment
of its ultimate parent
undertaking~~

"129A. Particulars to be shown in subsidiary
company's accounts in relation to
its ultimate parent undertaking

(1) Subject to subsection (2), where, at the end of its financial year, a company is the subsidiary of another undertaking, there shall be stated in, or in a note on, or statement annexed to, the company's accounts laid before it in general meeting the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking and, if known to them, the country in which it is incorporated or established.

(2) Subsection (1) shall not require the disclosure by a company which carries on business outside Hong Kong of information with respect to the undertaking regarded by the

directors as being ~~its-the company's~~ ultimate parent undertaking if =

- (a) the disclosure would, in their opinion, be harmful to the business of that parent undertaking or of the ~~first-mentioned~~ company or any other of that parent undertaking's subsidiaries; and
- (b) the Financial Secretary agrees that the information need not be disclosed."

98. Directors' report to be attached to balance sheet

Section 129D is amended -

- (a) in subsection (3)(h), by repealing ", if" and substituting ", the company";
- (b) in subsection (6) -
 - (i) by repealing "body corporate" and substituting "undertaking";
 - (ii) by repealing "body" and substituting "undertaking".

109. Disqualifications for appointment as auditor

Section 140(2)(d) is repealed and the following substituted -

"(d) a person who is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking which is -

- (i) the subsidiary of the company;
- (ii) the parent undertaking of the company; or
- (iii) a subsidiary of the company's parent undertaking,

or would be so disqualified if the undertaking were a company,".

1110. Particulars in accounts of directors' emoluments, pensions, etc.

Section 161(9)(a) is amended by repealing "body corporate" where it twice appears and substituting "undertaking".

1211. Duty of director or past director to disclose payment for loss of office, etc., made in connexion with transfer of shares in company

Section 163B(1)(b) is repealed and the following substituted -

"(b) an offer made by or on behalf of some other undertaking with a view to the company becoming its subsidiary or a subsidiary of its parent undertaking;".

1312. Power to amend requirements as to accounts, Schedules, tables, forms and fees

Section 360(5) is amended by adding "or Twenty-third" after "Sixteenth".

**1413. Form of Statement in lieu of Prospectus
to be delivered to Registrar by a
Private Company on becoming a
Public Company and Reports
to be set out therein**

The Second Schedule is amended -

- (a) by repealing "[s. 30]" and substituting "[ss. 2B & 30]";
- (b) in Part II, in paragraph 2 -
 - (i) in sub-paragraph (1), by repealing "shares in a body corporate" and substituting "shares in an undertaking";
 - (ii) by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (iii) in sub-paragraph (3), by repealing "body corporate's" wherever it appears and substituting "undertaking's";
- (c) in Part III -
 - (i) in paragraph 4 -
 - (A) by repealing "a body corporate" and substituting "an undertaking";
 - (B) by repealing "body corporate" and substituting "undertaking";

- (ii) in paragraph 6, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking".

1514. Matters to be Specified in Prospectus and Reports to be set out therein

The Third Schedule is amended -

- (a) by repealing "[ss. 38 & 342]" and substituting "[ss. 2B, 38, 38A, 38D, 42, 342, 342A, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]";
- (b) in Part II, in paragraph 33, by repealing "body corporate" wherever it appears and substituting "undertaking";
- (c) in Part III -
 - (i) in paragraph 43, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking";
 - (ii) in paragraph 46 -
 - (A) in ~~sub~~-sub-paragraph (b), by repealing "holding company or of a

subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking";

- (B) in ~~sub~~-sub-paragraph (c)(i), by repealing "holding company or a subsidiary of the company's holding company" and substituting "parent undertaking or ~~of~~-a subsidiary of the company's parent undertaking".

1615. Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to Allotment on a Prospectus Issued, and Reports to be set out therein

The Fourth Schedule is amended -

- (a) by repealing "[s. 43]" and substituting "[ss. 2B & 43]";

- (b) in Part II, in paragraph 2 -

(i) in sub-paragraph (1), by repealing "a body corporate" and substituting "an undertaking";

(ii) by repealing "body corporate" wherever it appears and substituting "undertaking";

- (iii) in sub-paragraph (3), by repealing "body corporate's" wherever it appears and substituting "undertaking's";
- (c) in Part III -
 - (i) in paragraph 4 -
 - (A) by repealing "a body corporate" and substituting "an undertaking";
 - (B) by repealing "body corporate" and substituting "undertaking";
 - (ii) in paragraph 6, by repealing "holding company or of a subsidiary of the company's holding company" and substituting "parent undertaking or of a subsidiary of the company's parent undertaking".

1716. Accounts

The Tenth Schedule is amended -

- (a) in the square brackets, by adding "2B," before "48B";
- (b) in Part II -
 - (i) in paragraph 18(1) and (5), by repealing "body corporate" wherever it appears and substituting "undertaking";
 - (ii) in paragraph 19 -

(A) by repealing "body corporate"
wherever it appears and substituting
"undertaking";

(B) by repealing "bodies corporate"
where it twice appears and
substituting "undertakings".

1817. Twenty-third Schedule added

The following is added -

"TWENTY-THIRD SCHEDULE [ss. 2B, 124
& 360]

PARENT AND SUBSIDIARY UNDERTAKINGS

1. Interpretation

(1) For the purposes of the provisions specified under
section 2B(3) of this Ordinance and this Schedule -

"parent company" (母公司) means a parent undertaking which is
a company;

"parent undertaking" (母企業) shall be construed in accordance
with section 2B;

"shares" (股、股份) shall be construed, for the purposes of the
provisions specified under section 2B(3) of this
Ordinance, as a reference to -

(a) in relation to an undertaking with a share
capital, the allotted shares;

- (b) in relation to an undertaking with capital in the form other than share capital, the rights to share in the capital of the undertaking;
and
- (c) in relation to an undertaking without any capital, the interest -
 - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking; or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding-up;

"undertaking" (企業), in relation to the provisions specified under section 2B(3) of this Ordinance, includes -

- (a) a body corporate or corporation;
- (b) a partnership;
- (c) an unincorporated body carrying on a trade or business, whether for profit or not.

(2) In construing any references to an undertaking which is not a company for the purposes of this Ordinance, other expressions appropriate to companies shall be construed, in relation to ~~an~~that undertaking, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

2. Parent undertaking and subsidiary undertaking

(1) An undertaking is a parent undertaking ("parent undertaking") in relation to another undertaking ("subsidiary undertaking") if -

(a) the subsidiary undertaking is a body corporate and is a subsidiary of the parent undertaking by virtue of section 2(4), (5), (6) and (7) of this Ordinance;

(b) the subsidiary undertaking is not a body corporate and the parent undertaking -

- (i) holds a majority of the voting rights in the subsidiary undertaking;
- (ii) is a member of the subsidiary undertaking and has the right to appoint or remove a majority of its board of directors; or
- (iii) is a member of the subsidiary undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the subsidiary undertaking; or

(c) the parent undertaking has the right to exercise a dominant influence over the subsidiary undertaking by virtue of -

(i) the provisions contained in the subsidiary undertaking's memorandum or articles or equivalent constitutional documents; or

(ii) a control contract.

(2) For the purposes of subsection (1)(b), an undertaking shall be treated as a member of another undertaking ("the relevant undertaking"), if -

(a) any of its subsidiary undertakings is a member of the relevant undertaking; or

(b) any shares in the relevant undertaking are held by a person acting on behalf of the first-mentioned undertaking or any of its subsidiary undertakings.

(3) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

~~(4) For the purposes of subsection (1)(c) -~~

~~(a) an undertaking shall not be regarded as having the right to exercise a dominant influence -~~

~~over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which the directors are, or a majority of the directors is, obliged to comply with whether or not they are for the benefit of that other undertaking; and~~

~~(b) a "control contract" (控制合約) means a contract in writing conferring a right which is—~~

~~———— (i) of a kind authorized by the memorandum or articles, or equivalent constitutional documents, of the undertaking in relation to which the right is exercisable; and~~

~~———— (ii) permitted by the law under which that undertaking is established.~~

3. Voting rights in ~~an~~ undertaking

(1) For the purposes of In this Schedule section 2(1)(b)(i) and (iii), the references to the voting rights in an undertaking are shall be construed as references to 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.

(2) For the purposes of subsection (1), where an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

(3) The voting rights in an undertaking referred to in subsection (1) shall be reduced by any rights held by the undertaking itself.

4. **Right to appoint or remove**~~a~~
majority of ~~the~~ directors

For the purposes of section 2(1)(b)(ii) -

- (a) the reference to the right to appoint or remove a majority of the board of directors ~~is~~ shall be construed as a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters;
- (b) an undertaking shall be treated as having the right to appoint to a directorship if -

- (i) a person's appointment to it follows necessarily from his appointment as a director of the undertaking; or
 - (ii) the directorship is held by the undertaking itself; and
- (c) a right to appoint or remove a directorship which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

5. Right to exercise dominant influence

For the purposes of section 2(1)(c) -

- (a) an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which the directors are, or a majority of the directors is, obliged to comply with whether or not they are for the benefit of that other undertaking; and
- (b) a "control contract" (控制合約) means a contract in writing conferring a right which is -

- (i) of a kind authorized by the memorandum or articles, or equivalent constitutional documents, of the undertaking in relation to which the right is exercisable; and
- (ii) permitted by the law under which that undertaking is established.

56. Rights exercisable only in certain circumstances

(1) ~~Without~~For the purposes of this Schedule but ~~without~~ prejudice to subsection (2), rights which are exercisable only in certain circumstances ~~for the purposes of this Schedule~~ shall be taken into account only -

- (a) when the circumstances have arisen, and for so long as they continue to obtain; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

67. Rights held by one person on behalf of another

For the purposes of this Schedule -

- (a) rights held by a person in a fiduciary capacity shall be treated as not held by him;
- (b) rights held by a person as nominee for another shall be treated as held by the other; and
- (c) rights shall be treated as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

**78. Rights attached to shares
by way of security**

Where any rights referred to in this Schedule are attached to shares held by way of security, the rights shall be treated as held by the person providing the security, if -

- (a) apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in accordance with his instructions; and
- (b) the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in his interests.

89. Rights attributed to parent undertaking

(1) For the purposes of section 2, rights shall be treated as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in section 67 or 78 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of section 78, rights shall be treated as being exercisable in accordance with the instructions of or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

(4) In this section, "group undertaking" (企業集團), in relation to an undertaking ("relevant undertaking"), means an undertaking which is -

- (a) a parent undertaking or subsidiary undertaking of the relevant undertaking; or
- (b) a subsidiary undertaking of any parent undertaking of the relevant undertaking.

910. Supplementary

References in any provision of sections 67, 78 and 89 to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those

sections but not rights which by virtue of any such provision are to be treated as not held by him."

1918. Transitional provisions

(1) The amendments made by this ~~Schedule and Part 2 of~~ ~~Schedule 5 to this~~ Ordinance shall not apply to a company (including a company which is an insurer within the meaning of section 2(1) of the Insurance Companies Ordinance (Cap. 41)) until the start of the company's first financial year beginning after the expiration of the 30 days immediately following the commencement of this section.

(2) For the avoidance of doubt, it is hereby declared that any provision of the principal Ordinance amended by this ~~Schedule~~ Ordinance shall, as it is in force from time to time apart from that amendment, apply to and in relation to a company until subsection (1) applies to the company.

Consequential Amendments

Specification of Public Offices

20. Schedule amended

The Specification of Public Offices (Cap. 1 sub. leg. C) is amended, in the Schedule where the Financial Secretary is the specified public office, by repealing "Companies Ordinance

(Chapter 32), sections 123(4), 124(2), 126(2) and (3)" and substituting "Companies Ordinance (Chapter 32), sections 124(2), 126(2)".

Insurance Companies Ordinance

21. Accounts and Statements

The Third Schedule to the Insurance Companies Ordinance (Cap. 41) is amended by adding -

"1A. (1) A reference in Part 1, 2, 3 or 4 of this Schedule to parent company or subsidiary undertaking shall be construed in accordance with section 2B of the Companies Ordinance (Cap. 32) as read with the Twenty-third Schedule to that Ordinance.

(2) A reference in a provision specified under subparagraph (3) for the purposes of this subparagraph -

(a) to a holding company shall be deemed to include a parent company; and

(b) to a subsidiary or subsidiary company shall be deemed to include a subsidiary undertaking.

(3) The provisions specified for the purposes of subparagraph (2) are -

(a) paragraph 4(1)(d) and (e)(iii) and (1AD)(f) and (g)(iii) of Part 1 of this Schedule;

(b) paragraph 9(a), (d), (e), (f), (j) and (l) of

- Part 2 of this Schedule;
- (c) the heading, and paragraphs 10, 11 and 12, of Part 3 of this Schedule;
- (d) paragraph 16(b)(ii), (d)(i), (e) and (g) of Part 4 of this Schedule."

Explanatory Memorandum

~~20.~~ The principal purpose of ~~Schedule 2~~this Bill is to modify the meaning of the term "subsidiary" in the ~~principal Companies~~ Ordinance ~~(Cap. 32)~~("the principal Ordinance") in order to make the meaning of the term more closely ~~align~~in alignment with the meaning attached to the term in the International Accounting Standards. However, the new meaning will only apply for the purposes of the group accounts of a company. For other purposes, the present meaning of the term "subsidiary" in the principal Ordinance will apply.

~~21.~~ ~~Section 1~~Clause 2 adds a new section 2B which, as read with the new Twenty-third Schedule at ~~section 17~~clause 18, specifies the meaning to be attached to the terms "parent company", "parent undertaking" and "subsidiary undertaking" as used in the amendments made to the principal Ordinance by ~~Schedule 2~~the Bill. It should be noted that new section 2B(3) specifies the provisions of the principal Ordinance to which the new terms are applicable.

~~322.~~ ~~Section 2~~Clause 3 repeals section 123(4) of the principal Ordinance and substitutes new section 123(4) and (4A). The new

section 123(4) and (4A) permits information to be given which is additional to the requirements of the principal Ordinance, or which diverges from those requirements, for the purpose of giving a true and fair view of the state of affairs or the profit ~~and~~ loss of a company. ~~Section 4~~Clause 5 makes a similar amendment to section 126 of the principal Ordinance.

~~423.~~ ~~Section 3~~Clause 4 adds new section 124(2A) to specify the basis on which a subsidiary may be excluded from the group accounts of a company.

~~24. Section 6 amends section 128 of the principal Ordinance to specify how the shares of an undertaking which is a body corporate shall be treated for the purposes of determining whether it is a subsidiary of a company for the purposes of section 128(1) (see new section 128(2)(a) and, also, what information need not be disclosed under section 128(1) in respect of an undertaking (see new section 128(3)).~~

~~25. Section 7 repeals and replaces section 129A of the principal Ordinance. The new section 129A(1) requires a company which is a subsidiary of another undertaking to state in the company's accounts laid before it in general meeting the name of the undertaking regarded by the directors as being the company's ultimate parent undertaking. New section 129A(2) specifies what information need not be disclosed by virtue of that requirement.~~

~~26. Section 9 amends section 140(2) of the principal Ordinance to specify certain persons who are disqualified for appointment as a~~

~~company's auditor.~~

~~27. Part 2 of Schedule 5 specifies consequential amendments to the Insurance Companies Ordinance (Cap. 41) necessitated by the amendments to the principal Ordinance made by Schedule 2.~~

5. Clause 6 amends section 127(2) of the principal Ordinance to restrict the meaning of a subsidiary to a company because only a company is required to hold a general meeting in compliance with section 111(1) of the principal Ordinance.

6. Clauses 7, 9, 11 and 17 amend the references to a body corporate in sections 128, 129D(6) and 161(9)(a) of and the Tenth Schedule to the principal Ordinance consequent upon the amendment to the meaning of the term "subsidiary".

7. Clause 8 repeals and replaces section 129A of the principal Ordinance to amend the references to a body corporate and holding company to read respectively "undertaking" and "parent undertaking".

8. Clauses 10, 12, 14, 15 and 16 similarly amend the references to a body corporate and holding company in sections 140(2)(d) and 163B(1)(b) of and the Second, Third and Fourth Schedules to the principal Ordinance.

9. Clause 13 is a consequential amendment as a result of the addition of the new Twenty-third Schedule.

10. Clause 18 adds the new Twenty-third Schedule to specify the meaning to be attached to the terms "parent company", "parent undertaking" and "subsidiary undertaking".

11. Clause 19 contains a transitional provision.

12. Clauses 20 and 21 specify the consequential amendments to the Specification of Public Offices (Cap. 1 sub. leg. C) and the Insurance Companies Ordinance (Cap. 41) necessitated by the amendments to the principal Ordinance.

Economic Implications

The proposal in the Bill will make our company law more business-friendly and ensure that the Companies Ordinance continues to provide Hong Kong with the commercial legal infrastructure commensurate with its status as a major international commercial centre.

2. The proposal to amend the definition of “subsidiary” for the purposes of group accounts is expected to constitute little or no compliance burden on companies in general.