

**Bills Committee on Companies Bill**

**Follow-up to the Meeting on 6 May 2011**

**Supplementary Information on Part 9 and Part 12**

**INTRODUCTION**

In response to questions raised by Members at the meeting on 6 May 2011, this paper provides supplementary information on Part 9 (Accounts and Audit) and Part 12 (Company Administration and Procedure).

**PART 9**

**SME Financial Reporting Framework (“SME-FRF”)**

2. We expect that auditors will express an opinion as to whether the relevant financial statements are properly prepared, in all material respects, in accordance with the SME-FRF. The SME-FRF sets out the conceptual basis and qualifying criteria for the preparation of financial statements in accordance with the SME Financial Reporting Standard (“SME-FRS”). The SME-FRS contains detailed specifications and disclosures in relation to the preparation of financial statements. The latest SME-FRF and FRS issued by the Hong Kong Institute of Certified Public Accountants is available at –  
[http://app1.hkicpa.org.hk/ebook/HKSA\\_Members\\_Handbook\\_Master/volumeII/sme-frf&sme-frs.pdf](http://app1.hkicpa.org.hk/ebook/HKSA_Members_Handbook_Master/volumeII/sme-frf&sme-frs.pdf) (English only).

A sample of unqualified auditors’ report on financial statements prepared in accordance with the SME-FRS is available at Appendix 1 of the attached –  
[http://app1.hkicpa.org.hk/ebook/HKSA\\_Members\\_Handbook\\_Master/volumeIII/pn900clarified.pdf](http://app1.hkicpa.org.hk/ebook/HKSA_Members_Handbook_Master/volumeIII/pn900clarified.pdf) .

The auditor's opinion is expressed under the paragraph headed "Opinion" –

*"Opinion*

In our opinion, the financial statements of the Company for the year ended 31 December 20XX are prepared, in all material respects, in accordance with the SME-FRS. [In addition, in our opinion the balance sheet together with the notes thereon is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as at 31 December 20XX according to the best of our information and explanations given to us, and as shown by the books of the Company]<sup>1</sup>."

**Auditor's Rights to Information in relation to non-Hong Kong Subsidiary**

3. We are not aware of any reported court case in Hong Kong relating to the offence in section 133 of the Companies Ordinance ("CO") which is on auditor's rights to information.

4. As explained at the meeting on 6 May 2011, while an auditor of a company may require the company to obtain information from a non-Hong Kong subsidiary, the subsidiary's officers or other relevant persons under the Companies Bill ("CB"), it is provided in **clause 403(4) and (6)** that

- (a) the information has to be that the auditor reasonably requires for the performance of its duty; and
- (b) the company has to take all reasonable steps to obtain the information as soon as practicable.

5. We believe that the current formulation should provide sufficient protection to the company, including in situations where the company could not obtain certain information from a non-Hong Kong subsidiary

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<sup>1</sup> This additional wording is currently required for companies applying section 141D of the CO.

due to restriction imposed by non-Hong Kong legislation. However, we are prepared to review the relevant provisions in the light of Members' concern.

### **Companies Qualified for Simplified Reporting**

6. We do not have the estimated number of companies which are likely to be eligible to prepare simplified accounts and directors' reports under the CB. However, according to the Census and Statistics Department, it is estimated that SMEs constitute over 98% of business establishments in Hong Kong<sup>2</sup>.

7. Since "large" private companies in general have more complex accounts, it may not be appropriate for them to prepare simplified accounts in accordance with SME-FRS which is designed for SMEs. These private companies can still prepare accounts in accordance with the Hong Kong Financial Reporting Standard for Private Entities ("HKFRS for PEs") which is less onerous in terms of disclosure requirements than the full Hong Kong Financial Reporting Standards ("HKFRS"). We note that in other comparable jurisdictions like the United Kingdom ("UK"), companies and groups may apply the simplified reporting framework only if they meet the size criteria. The Standing Committee on Company Law Reform with members drawn from the business and relevant professional sectors also supported removing the option for private companies/groups of any size to opt for the use of SME-FRS based on approval by members holding 75% of the voting rights and no objection from the other members.

### **Protection for Minority Shareholders**

8. The CB already contains provisions which enable certain number of members of a company to apply to court for an order for inspection of company's books and paper (**Division 5 of Part 14**).

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<sup>2</sup> In this context, SMEs refer to manufacturing enterprises with fewer than 100 employees and non-manufacturing enterprises with fewer than 50 employees.

9. The proposed reporting exemption under the CB which allows certain small companies or groups of small companies to prepare financial statements in accordance with SME-FRF will not prevent such companies from preparing their financial statements under the full HKFRS or HKFRS for PEs. However, we do not consider it necessary to give minority shareholders of a small company or group of small companies a statutory right to request the financial statements to be prepared in accordance with a certain accounting framework. The choice should ultimately be rested with the directors of the company who owe fiduciary duties to the company. Other comparable jurisdictions (such as the UK) which enable small companies to prepare simplified accounts or directors' reports also do not have provisions giving minority shareholders the right to request preparation of full accounts or directors' reports.

## **PART 12**

### **Proxy as the Chairperson of a General Meeting**

#### *UK*

10. Clause 592 of the CB is modelled on section 328 of UK Companies Act 2006 ("UKCA 2006"), which is a new provision. Hansard does not contain any relevant passage in this regard. The appointment of a proxy as a chairman of an EGM was upheld in Re Bradford Investments plc [1990] BCC. Per Hoffmann J at p.745 paragraph c "...it would ...be strange if a meeting was quorate because two persons were present by proxy but neither of them was entitled to be chairman". Section 328 of UKCA 2006 thus clarifies that subject to the articles a proxy can be elected as chairman.

#### *Australia*

11. There is no express provision in the Australian Corporations Act 2001 ("ACA") to the effect that a proxy may be elected as chairman. Section 250A(4)(c) and (d) of the ACA however provides that if the proxy is the chairman, he must vote in the way specified in his

appointment.

*Singapore*

12. There is no statutory provision in this regard in the Singapore Companies Act.

**Financial Services and the Treasury Bureau  
Companies Registry  
11 May 2011**