W. H. LAM & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS (PRACTISING)

林 懷 熙 會 計 師 行

ROOMS 904-6, 9TH FLOOR, ARION COMMERCIAL CENTRE, 2-12 QUEEN'S ROAD WEST, HONG KONG.

香港皇后大道西 2-12 號聯發商業中心 9 樓 904-6 室

TEL (電話): 2524 6766, 2524 6767, 2524 7247, 2526 4040, 2526 4049

FAX (圖文傳真): 2868 5111, 2810 6508

E-MAIL (電子郵箱): whlam_co_cpa@yahoo.com.hk

LAM WAI HAY *林懷熙會計師*

FCPA(Practising), C.P.A., (Aust.), A.C.I.S., F.T.I.H.K.

TEL: 2522 3925 (Direct Line)

Your Ref.: CB1/BC/3/04

14th December 2004

Clerk to the Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

BY E-MAIL, BY FAX AND BY HAND

Dear Sir,

Companies (Amendment) Bill 2004

By reviewing the Companies (Amendment) Bill 2004 ("the Bill") and Hong Kong Accounting Standard 27 "Consolidated and Separate Financial Statements" ("HKAS 27") issued by Hong Kong Institute of Certified Public Accountants ("HKICPA"), we find the following new points which have not been included in our submission dated 30th November 2004. We would like to give our revised submissions on the Bill for consideration by the appropriate Bills Committee. Please note that the submissions dated 30th November 2004 is superseded by these revised submissions.

Subsection (2A) of Section 124

According to the Bill, Section 124 is amended by adding Subsections (2A) and (2B). Subsection (2A) of Section 124 specifies the following two conditions in which a subsidiary may be excluded from the group accounts:-

(a) if 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) if 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.

The above conditions are similar to that specified in Statements of Standard Accounting Practice 32 "Consolidated Financial Statements and Accounting for Investments in Subsidiaries" ("SSAP 32") issued by HKICPA. The followings are extracted from SSAP 32:-

"23. A subsidiary should be excluded from consolidation when:

a. control is intended to be temporary because the subsidiary is acquired and <u>held exclusively with a view to its subsequent disposal</u> in the near future; or

b. it operates under <u>severe long-term restrictions</u> which significantly impair its ability to transfer funds to the parent."

…… to be cont'd ……

W. H. LAM & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS (PRACTISING)
林 懷 熙 會 計 師 行
ROOMS 904-6, 9TH FLOOR, ARION COMMERCIAL CENTRE, 2-12 QUEEN'S ROAD WEST, HONG KONG.
香港皇后大道西 2-12 號聯發商業中心 9 樓 904-6 室
TEL (電話): 2524 6766, 2524 6767, 2524 7247, 2526 4040, 2526 4049
FAX (圖文傳真): 2868 5111, 2810 6508
E-MAIL (電子郵箱): whlam_co_cpa@yahoo.com.hk

LAM WAI HAY *林懷熙會計師*
FCPA(Practising), C.P.A., (Aust.), A.C.I.S., F.T.I.H.K.
TEL: 2522 3925 (Direct Line)

The words underlined are those also appeared in Subsection (2A) of Section 124.

However, SSAP 32 is to be superseded by HKAS 27 with its effective date of 1st January 2005. According to HKAS 27, the above two conditions specified in SSAP 32 were withdrawn and replaced by the followings:-

"16. A subsidiary shall be excluded from consolidation when there is evidence that (a) control is intended to be temporary because the subsidiary is acquired and held exclusively with a view to its disposal within twelve months from acquisition and (b) management is actively seeking a buyer. Investments in such subsidiaries shall be classified as held for trading and accounted for in accordance with HKAS 39 Financial Instruments: Recognition and Measurement.

17. When a subsidiary previously excluded from consolidation in accordance with paragraph 16 is not disposed of within twelve months, it shall be consolidated as from the date of acquisition (see HKAS 22). Financial statements for the periods since acquisition shall be restated.

18. Exceptionally, an entity may have found a buyer for a subsidiary excluded from consolidation in accordance with paragraph 16, but may not have completed the sale within twelve months of acquisition because of the need for approval by regulators or others. The entity is not required to consolidate such a subsidiary if the sale is in process at the balance sheet date and there is no reason to believe that it will not be completed shortly after the balance sheet date."

In view of the above changes in accounting requirements for consolidated financial statements, we would like the Bills Committee to pay attention to the following points:-

- Condition concerning severe long term restrictions on transferring cash is no longer a justification for not consolidating. Instead, whether a parent company loses control of the subsidiaries is the justification for non-consolidation.

- Temporary control is defined as a subsidiary is acquired and held exclusively with a view to its disposal within twelve months from acquisition. This condition emphasizes on the original intention of the parent company at the time of acquiring the subsidiary and the time limit for completing this propose.

…… to be cont'd ……

W. H. LAM & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS (PRACTISING)

林 懷 熙 會 計 師 行

ROOMS 904-6, 9TH FLOOR, ARION COMMERCIAL CENTRE, 2-12 QUEEN'S ROAD WEST, HONG KONG.
香港皇后大道西 2-12 號聯發商業中心 9 樓 904-6 室

TEL (電話): 2524 6766, 2524 6767, 2524 7247, 2526 4040, 2526 4049
FAX (圖文傳真): 2868 5111, 2810 6508
E-MAIL (電子郵箱): whlam_co_cpa@yahoo.com.hk

LAM WAI HAY *林懷熙會計師*
FCPA(Practising), C.P.A., (Aust.), A.C.I.S., F.T.I.H.K.
TEL: 2522 3925 (Direct Line)

Subsection 2 of Section 124

Subsection 2 of Section 124 of the Companies Ordinance specifies the following two criteria:

(a) group accounts shall not be required where the company is at the end of its financial year the wholly owned subsidiary of another body corporate; and

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of opinion that-

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amount involved, or would involve expense or delay out of proportion to the value to members of the company; or
(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or
(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking; and, if the directors are of such an opinion about each of the company's subsidiaries, group accounts shall not be required: Provided that the approval of the Financial Secretary shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

The criteria mentioned above are quite different from those specified in HKAS 27. The followings are extracted from the HKAS 27:

"*10. A parent need not present consolidated financial statements if and only if:*

(a) the parent is itself a wholly-owned subsidiary , or <u>is partially-owned subsidiary of another entity and its other owners, including those not otherwise entitled to vote, have been informed about, and do not object to the parent not presenting consolidated financial statements</u>;

(b) the parent's debt or equity instruments are not traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local and regional markets);

…… to be cont'd ……

W. H. LAM & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS (PRACTISING)
林 懷 熙 會 計 師 行
ROOMS 904-6, 9TH FLOOR, ARION COMMERCIAL CENTRE, 2-12 QUEEN'S ROAD WEST, HONG KONG.
香港皇后大道西 2-12 號聯發商業中心 9 樓 904-6 室
TEL (電話): 2524 6766, 2524 6767, 2524 7247, 2526 4040, 2526 4049
FAX (圖文傳真): 2868 5111, 2810 6508
E-MAIL (電子郵箱): whlam_co_cpa@yahoo.com.hk

LAM WAI HAY *林懷熙會計師*
FCPA(Practising), C.P.A., (Aust.), A.C.I.S., F.T.I.H.K.
TEL: 2522 3925 (Direct Line)

(c) the parent did not file, nor is it in the process of filing, its financial statements with a securities commission or other regulatory organization for the purpose of issuing any class of instruments in a public market; and

(d) the ultimate or any intermediate parent of the parent produces consolidated financial statements available for public use that comply with Hong Kong Financial Reporting Standards or International Financial Reporting Standards.

We would like the Bills Committee to note that except for the requirement concerning that a parent is itself a wholly-owned subsidiary, the other criteria set out in Subsection 2 of Section 124 which has not been proposed to be amended in the Companies (Amendment) Bill 2004 are wholly different from those in HKAS 27.

In view of the differences of accounting requirements for consolidated financial statements between HKAS 27 and the Companies (Amendment) Bill 2004, we would like to suggest the Bills Committee to seek opinions from HKICPA so as to come up with a coconscious in the preparation of consolidated financial statements.

Yours faithfully,
W. H. LAM & COMPANY

LWH/lwy