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Clerk to Bills Committee
Legislative Council Secretariat
3rd Floor
Citibank Tower
3 Garden Road
Central
Hong Kong

For the attention of Ms May Leung

26 November 2004

Dear Madam

Companies (Amendment) Bill 2004 ("the Bill")

We refer to your letter dated 10 November 2004 inviting us for comments on the captioned matter. On behalf of ACCA (The Association of Chartered Certified Accountants) Hong Kong, we are writing to submit our comments for your consideration.

We understand that the principal purpose of the Bill is to modify the meaning of the term "subsidiary" in the Companies Ordinance in order to make it more closely in alignment with that in the International Accounting Standards ("IAS") such that it will become clearer for the parent undertaking as to the circumstances where consolidated financial statements are required.

Having this objective in mind, we propose the Bills Committee to further consider the wordings of the proposed section 124(2A) regarding the exclusion of a subsidiary from the group accounts, and clause 2 under the Twenty-third Schedule in respect of the definition of a subsidiary undertaking.

The two conditions for exclusion of a subsidiary from consolidation as set out in the proposed sub-sections (a) and (b) under section 124(2A) have already been amended in the International Accounting Standards. The exclusion due to severe long-term restrictions that hinder the exercise of the rights of the holding

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company over the assets or management of the subsidiary has been removed. It was considered that such a restriction on the transfer of funds from the subsidiary to the parent does not preclude control.

On the other hand, it is also clearly spelt out in the Basis for Conclusions accompanying IAS27 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.

We also note certain inconsistencies in the wordings of clause 2 of the Twenty-third Schedule regarding the definition of a subsidiary undertaking as compared to IAS27. 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 clause 2(1)(c), the scope of such power is extended to having a "dominant influence over the subsidiary undertaking".

Accordingly, we recommend the Bills Committee to revise the wordings of the proposed section in order to minimise any discrepancies between the legislation and the accounting standard and to avoid any unnecessary confusion.

Should you like to clarify any of the above issues, please do not hesitate to contact myself or Ms Sonia Khao at 2524 4988.

Yours faithfully

Victor Ng
President