LC Paper No. CB(1)530/04-05(01)

Companies (Amendment) Bill 2004

Administration's Responses to the Submission dated 14 December 2004 from W. H. Lam & Co.

	Summary of Comments[1]	Responses
1	**Proposed section 124(2A)(a)**: The condition concerning severe long term restrictions on transferring cash is no longer a justification for not consolidating.	The proposed section 124(2A)(a) is modelled on the existing section 229(3)(a) of the United Kingdom (UK) Companies Act 1985. We note that the International Accounting Standards Board (IASB) had decided to remove this condition from the latest IAS 27 "Consolidated and Separate Financial Statements" which was promulgated in December 2003. In the light of the latest development, we would consider proposing a Committee Stage Amendment (CSA) to repeal this proposed provision from the Bill.
2	**Proposed section 124(2A)(b):** Control is temporary when a subsidiary is acquired and held exclusively with a view to its disposal within twelve months from acquisition. This condition emphasizes the original intention of the parent company at the time of acquiring the subsidiary and the time limit for completing the disposal.	The proposed section 124(2A)(b) is modelled on the previous section 229(3)(c) of the UK Companies Act 1985, which has lately 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.

[1] For details of the comments, please refer to the original submission from W. H. Lam & Co.

	Summary of Comments[1]	Responses
3	**Existing section 124(2)**: Except for the requirements concerning that a parent is itself a wholly-owned subsidiary, the other criteria set out in section 124(2)[2] which has not been proposed to be amended in the Bill are different from those in paragraph 10[3] of HKAS 27.	According to HKICPA, paragraph 10 of HKAS 27 "Consolidated and Separate Financial Statements" is modelled on the same paragraph under IAS 27 "Consolidated and Separate Financial Statements" which was promulgated in December 2003. We would review the proposed legislative amendments together with this new paragraph under the accounting standard, taking into account the international development in this respect.

Financial Services and the Treasury Bureau
December 2004

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2 Section 124(2) of the Companies Ordinance (Cap. 32) states that "(n)otwithstanding anything in subsection (1) –
(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.

3 Paragraph 10 of HKAS 27 states that a parent need not present consolidated financial statements if and only if –
(a) the parent is itself a wholly-owned subsidiary, or is a 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;
(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);
(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.