CO Rewrite
重寫《公司條例》

CO Rewrite

Rewrite of the Companies Ordinance

Consultation Paper

Accounting and Auditing Provisions

March 2007

Financial Services and the Treasury Bureau
www.fstb.gov.hk

ABOUT THIS DOCUMENT

1. This paper is published by the Financial Services and the Treasury Bureau (FSTB) to consult the public on legislative proposals to improve the accounting and auditing provisions in the Companies Ordinance (Chapter 32) (CO). This is the first of a series of public consultations on the rewrite of the CO. The rewrite aims to make our company law more user-friendly and provide Hong Kong with a modernized legal infrastructure commensurate with its status as a major international business and financial centre. We plan to issue further consultation paper(s) on other complex areas, such as share capital, distribution of profits and assets, and company charges in early 2008. After obtaining views and comments on individual subject areas, we aim to issue the new Companies Bill in the form of a White Bill for consultation in mid-2009.

2. Questions for consultation are contained for ease of reference in Chapter 9. Please send your comments to us on or before **29 June 2007**, by one of the following means:

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3. Any questions about this document may be addressed to Miss Carol Or, Assistant Secretary for Financial Services and the Treasury (Financial Services) who can be reached at: (852) 2528 9077 (phone), (852) 2869 4195 (fax), carolor@fstb.gov.hk (email).

4. This consultation paper is also available on the FSTB's website http://www.fstb.gov.hk/fsb and the Companies Registry's website http://www.cr.gov.hk.

5. Submissions will be received on the basis that we may freely reproduce and publish them, in whole or in part, in any form and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgment of the party making the proposal.

6. Please note that the names of respondents, their affiliation(s) and comments may be posted on the FSTB's website or referred to in other documents we publish. If you do not wish your name and/or affiliation to be disclosed, please state so when making your submission. Any personal data submitted will only be used for purposes which are directly related to consultation purposes under this consultation paper. Such data may be transferred to other Government department/agencies for the same purpose. For access to or correction of personal data contained in your submission, please contact Miss Carol Or (for contact details, see paragraph 3 above).

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ABBREVIATIONS

AASC	Auditing and Assurance Standards Committee of the Hong Kong Institute of Certified Public Accountants
AGM	Annual General Meeting
CGR	Corporate Governance Review
CO	Companies Ordinance
FRC	Financial Reporting Council
FRSC	Financial Reporting Standards Committee of the Hong Kong Institute of Certified Public Accountants
FSTB	Financial Services and the Treasury Bureau
HKAS	Hong Kong Accounting Standard
HKFRSs	Hong Kong Financial Reporting Standards
HKICPA	Hong Kong Institute of Certified Public Accountants
HKSA	Hong Kong Society of Accountants
IFRSs	International Financial Reporting Standards
ORCO	Overall Review of the Companies Ordinance
PAO	Professional Accountants Ordinance
SCCLR	Standing Committee on Company Law Reform
SEHK	The Stock Exchange of Hong Kong Limited
SFC	Securities and Futures Commission
SMEs	Small and Medium-sized Entities
SME-FRF	SME Financial Reporting Framework
SME-FRS	SME Financial Reporting Standard
UK	United Kingdom

EXECUTIVE SUMMARY

1. The CO provides the legal framework which enables the business community to form and operate companies. It also sets out the parameters within which companies must operate, so as to safeguard the interests of those parties who have dealings with them, such as shareholders and creditors.

2. The existing accounting, auditing and reporting requirements in the CO have developed alongside the key features of a company, namely the separation of owners (i.e. shareholders) from those running the business, and the limitation of the financial liability of the owners to the capital they have provided or agreed to provide. Annual accounts serve both as a stewardship report by the directors to shareholders as well as a useful source of information to other stakeholders, such as creditors and investors. The integrity of the financial reporting is safeguarded by the auditing requirements. The compliance burden on private companies, particularly smaller ones, is relieved through certain exemptions or special arrangements under the CO, such as preparing only simplified accounts. In addition, the requirements under the CO are complemented by other rules governing the contents of accounts and reports as enshrined under the financial reporting standards issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) and, in the case of listed companies, Listing Rules promulgated by The Stock Exchange of Hong Kong Limited (SEHK).

3. In mid-2006, the FSTB launched the rewrite of the CO, which aims to make our company law more user-friendly and provide Hong Kong with a modernized legal infrastructure commensurate with its status as a major international business and financial centre. As the first of a series of public consultations, this consultation paper sets out the legislative proposals (Proposals) to improve the accounting and auditing provisions in the CO. The Proposals are based on the work of a working group comprising representatives of the HKICPA and relevant government departments established in 2002 to undertake a comprehensive review of the accounting and auditing provisions of the CO.

4. The Proposals have been developed, in the main, to improve the disclosure and transparency of the information in annual accounts, enhance compliance with the relevant requirements and save compliance and business costs incurred by companies. The principal proposals are summarized as follows:

(a) Providing for an accounting reference date, an accounting reference period and a financial year in accordance with the Standing Committee on Company Law Reform (SCCLR)'s previous recommendations, in order to provide greater certainty to the periods for which accounts should be prepared (Chapter 3);

(b) Relieving a holding company from the obligation to prepare its own accounts, provided that the company has included its own balance sheet as a note to its group accounts (Chapter 3);

(c) Making the directors' report a more forward-looking, analytical and informative document by requiring the inclusion of a business review covering, inter alia, the principal risks and uncertainties facing the company and the likely future developments in its business while allowing most private companies to prepare simplified directors' report (Chapter 4);

(d) Requiring directors to make a statement in the directors' report concerning their awareness of relevant audit information of which the auditors are unaware to ensure that the directors consider carefully whether they have in fact disclosed all such information to their auditors (Chapter 4);

(e) Modernizing and streamlining the provisions on directors' remuneration, along the lines of the SCCLR's previous recommendations regarding the disclosure of individual director's remuneration packages, and the introduction of a directors' remuneration report (Chapter 4);

(f) Making the provisions regarding summary financial reports more user-friendly in order to enable more companies and members to take advantage of them, thereby saving operating costs (Chapter 5);

(g) Enhancing auditors' rights including, inter alia, their access to information, and providing them with qualified privileges for statements made in the course of their duties and in respect of their resignation, while increasing auditors' responsibilities, such as requiring all outgoing auditors to provide a statement of the circumstances (if any) connected with his ceasing to hold office that he considers should be brought to the attention of the members or creditors of the company (Chapter 6);

(h) Relaxing the somewhat restrictive qualifying criteria set out in section 141D of the CO to enable more private companies (including those which are members of a group of companies) to take advantage of simplified reporting and disclosure requirements, such as simplified accounts and simplified directors' reports. Small companies limited by guarantee that meet certain qualifying criteria should also be allowed to prepare simplified accounts and simplified directors' reports (Chapter 7); and

(i) Reviewing the relative roles of the accounting disclosure requirements in the CO, such as those in the Tenth Schedule and Eleventh Schedule, the Hong Kong Financial Reporting Standards (HKFRSs) (which are now fully converged with the International Financial Reporting Standards (IFRSs)) and the Small and Medium-sized Entities Financial Reporting Standard (SME-FRS) issued by the HKICPA (Chapter 8).

5. The Government will carefully study comments received during this consultation before taking a final view on the Proposals. The Government is reviewing other provisions in the CO with inputs from four dedicated advisory groups comprising representatives from relevant professional and business organizations, academics and members of the SCCLR. We aim to issue a White Bill in mid-2009 for public consultation before introducing the new Companies Bill into the Legislative Council tentatively in the third quarter of 2010.

CHAPTER 1

INTRODUCTION

Background

1.1 The CO[1] provides the legal framework which enables the business community to form and operate companies. It also sets out the parameters within which companies must operate, so as to safeguard the interests of those parties who have dealings with them, such as shareholders and creditors. As at 28 February 2007, the register of companies held 600 589 companies which were formed and registered locally in Hong Kong, comprising 592 134 private companies[2] and 8 455 public companies[3].

1.2 The CO is one of the longest and most complex pieces of legislation in Hong Kong, with over 600 sections and 20 schedules. It was last substantially reviewed and amended in 1984, and is broadly in line with the major United Kingdom (UK) company law reforms contained in the Companies Act 1948 and some subsequent reforms, such as those contained in the Companies Act 1976. The SCCLR[4] was formed in 1984 to advise the Government on necessary amendments to the CO on a continuous basis.

1.3 Over the past decade, the SCCLR and the Government have conducted several major reviews with a view to modernizing the company law and upgrading its corporate governance regime, resulting in recommendations to amend various sections of the CO. Over the past few years, we have implemented some of those recommendations by means of several amendment bills, most notably the Companies (Amendment) Ordinance 2003 and the Companies (Amendment)

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1 Available on http://www.legislation.gov.hk.

2 A private company is defined under section 29(1) of the CO to mean a company which by its articles:
(a) restricts the right to transfer its shares;
(b) limits the number of its members to 50; and
(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

3 Any company other than a private company is regarded as a public company under the CO. Public companies are subject to tighter regulation, such as the requirement to submit annual accounts to the Registrar of Companies.

4 The SCCLR also advises on amendments required to be made to the legislation relating to securities with the objective of providing support to the Securities and Futures Commission (SFC) in administering the legislation. Members of the SCCLR include representatives of the SFC, the Hong Kong Exchanges and Clearing Limited and relevant government departments, as well as individuals from relevant sectors or professions such as accountancy, legal and company secretarial. Please see http://www.cr.gov.hk for further information.

Ordinance 2004. A summary of the major reviews on company law and the recent amendment ordinances is at **Appendix I**.

Reasons for Rewriting the Companies Ordinance

1.4 The piecemeal approach to amending the CO has its limitations. We have now reached a stage where action to follow up many of the remaining recommendations, such as reform of the capital maintenance provisions and modernization of statutory language, can best be taken forward in the context of a rewrite of the CO. Moreover, antiquated concepts, such as the underlying assumption of paper-based communications between a company and its members and the lengthy and complex provisions regarding directors' loans and directors' remuneration, should be updated and simplified.

1.5 The rewrite would improve the structuring of the parts and sections, and enhance the clarity of the provisions of the CO. With streamlined and modernized regulation, our company law will meet fully the needs of and help save compliance and business costs incurred by all companies registered in Hong Kong. It would also benefit other relevant parties, such as company shareholders, directors and auditors.

1.6 The rewrite will also provide an opportunity for Hong Kong to leverage from the developments regarding company law in other major common law jurisdictions. In this regard, the following major overseas initiatives should be noted:

- <u>UK</u>: The review of company law started in 1998. The Company Law Reform Bill was introduced into the Parliament in November 2005 and enacted as the Companies Act 2006 on 8 November 2006. Some of the provisions, such as those on company communications to members and others, commenced in January 2007 while all the other parts are scheduled to come in force by October 2008.

- <u>Australia</u>: Australian company law has been under continuous review and reform since 1991. The major initiatives were the Corporation Law Simplification Programme which started in 1995 and the Corporate Law Economic Reform Program which started in 1999.

- <u>New Zealand</u>: A completely new Companies Act was enacted in 1993.

- Singapore: Company law reform commenced in 1999 and has resulted in the enactment of a number of companies amendment acts, the latest being the Companies (Amendment) Act 2005 which introduced, among others, a mandatory no-par value regime.

Broad Timeframe of the Rewrite

1.7 With the support of the Legislative Council, the FSTB launched a comprehensive rewrite of the CO in mid-2006. In view of the extensive nature of the rewrite exercise, we have adopted a phased approach. Specifically, we will tackle the core company provisions in the first phase, as they affect the daily operation of about 600 000 live companies. Those parts of the CO regarding prospectuses will be dealt with in a separate review by the SFC[5]. Our tentative target is to introduce the new Companies Bill into the Legislative Council in the third quarter of 2010. We will deal with the winding-up and other insolvency-related provisions [6] in the CO, which are mainly administered by the Official Receiver's Office, in the second phase of the rewrite. Details of this second phase will be formulated in due course.

1.8 We consider it important to gauge views of stakeholders and the general public in the process of the rewrite. Apart from the SCCLR and an existing working group [7] reviewing the accounting and auditing provisions of the CO (Working Group) (see paragraph 1.9 below), we have established four dedicated advisory groups, comprising representatives from relevant professional and business organizations, academics and members of the SCCLR, to advise on specific issues concerning the rewrite. In addition, we intend to conduct public consultations in stages on certain key issues. Besides the accounting and auditing provisions covered in this paper, other issues including share capital, distribution of profits and assets and company charges will be put forward for public consultation in early 2008. A White Bill will

[5] In August 2005, the SFC issued the Consultation Paper on Possible Reforms to the Prospectus Regime in the CO for public consultation. Taking into account the comments received, the SFC issued its consultation conclusions in September 2006, and decided to pursue in principle the majority of the proposals in the consultation paper, revise a few of them and not to take forward some others at this stage. The SFC will discuss the proposed legislative amendments with the Administration with a view to publishing one or more draft bill consultation paper(s).

[6] Mainly Parts IVA, V, VI and X of the existing CO and the relevant subsidiary legislation.

[7] The full name of the Working Group is the Joint Government/Hong Kong Institute of Certified Public Accountants Working Group to Review the Accounting and Auditing Provisions of the CO.

be issued for further public consultation in mid-2009. It will enable the public to comment on the proposals in a holistic manner.

Review of Accounting and Auditing Issues

1.9 The Working Group was established in March 2002 to undertake a comprehensive review of the accounting and auditing provisions in Part IV of the CO which, to a large extent, were not examined in the context of the SCCLR's report on the recommendations of a consultancy report of the review of the CO published in February 2000[8]. Nevertheless, some of the SCCLR's proposals made as a result of the Corporate Governance Review (CGR) undertaken between 2000 to 2003 touched on the financial reporting and auditing provisions of the CO[9]. These proposals were subsequently subsumed by the Working Group.

1.10 Since its establishment, the Working Group has held a total of 51 meetings. Its terms of reference and a list of its members since establishment are at **Appendices II and III** respectively.

1.11 The Working Group's review covers the provisions relating to:

- the keeping and inspection of a company's accounting records;
- the preparation of a company's annual accounts and associated requirements;
- disclosure requirements as regards company accounts and other reports;
- particular provisions related to group accounts and to private companies, particularly small and medium-sized entities (SMEs); and
- issues related to the rights and obligations of auditors.

1.12 In the course of the review, the Working Group has studied the legislative history and operations of the relevant accounting and auditing

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8 The SCCLR's report is available at http://www.cr.gov.hk. For brief background about the review, see Appendix I below.

9 Examples of such proposals are: giving auditors the power to report on inconsistencies between the audited accounts and other financial information contained in the directors' report and other sections of the financial report; and the provision of an accounting reference date.

provisions. It has taken into consideration earlier recommendations of the SCCLR, the company law and company law reform initiatives of other comparable jurisdictions, particularly the UK, Australia and Singapore, and developments in international and local accounting and auditing standards. It has also submitted its recommendations to the SCCLR, and finalized them with the benefit of the latter's views. The Government will take a view on the Working Group's proposals only after studying carefully the comments received during this consultation.

Principal Proposals

1.13 As a result of its review, the Working Group has identified a number of aspects of the current framework in the CO, which require improvement or refinement. Its principal proposals are as follows:

- Providing for an accounting reference date, an accounting reference period and a financial year in accordance with the SCCLR's previous recommendations, in order to provide greater certainty to the periods for which accounts should be prepared;

- Relieving a holding company from the obligation to prepare its own accounts, provided that the company has included its own balance sheet as a note to its group accounts;

- Making the directors' report a more forward-looking, analytical and informative document by requiring the inclusion of a business review covering, inter alia, the principal risks and uncertainties facing the company and the likely future developments in its business while allowing most private companies to prepare a simplified directors' report;

- Requiring directors to make a statement in the directors' report concerning their awareness of relevant audit information of which the auditors are unaware to ensure that the directors consider carefully whether they have in fact disclosed all such information to their auditors;

- Modernizing and streamlining the provisions on directors' remuneration, along the lines of the SCCLR's previous recommendations regarding the disclosure of individual director's remuneration packages, and the introduction of a directors' remuneration report;

- Making the provisions regarding summary financial reports more user-friendly in order to enable more companies and members to take advantage of them, thereby saving operating costs;

- Enhancing auditors' rights including, inter alia, their access to information, and providing them with qualified privileges for statements made in the course of their duties and in respect of their resignation while increasing auditors' responsibilities, such as requiring all outgoing auditors to provide a statement of the circumstances (if any) connected with his ceasing to hold office that he considers should be brought to the attention of the members or creditors of the company;

- Relaxing the somewhat restrictive qualifying criteria set out in section 141D of the CO to enable more private companies (including those which are members of a group of companies) to take advantage of simplified reporting and disclosure requirements, such as simplified accounts and simplified directors' reports. Small companies limited by guarantee that meet certain qualifying criteria should also be allowed to prepare simplified accounts and simplified directors' reports; and

- Reviewing the relative role of the accounting disclosure requirements in the CO, such as those in the Tenth Schedule and Eleventh Schedule, the HKFRSs (which are now fully converged with the IFRSs) and the SME-FRS issued by the HKICPA.

Key Considerations of the Review

1.14 In developing its proposals, the Working Group has given due regard to the following factors:

- **Disclosure and transparency**: enhancing the quality and usefulness of the information contained in annual accounts and related documents (e.g. improving the directors' report; introducing a directors' remuneration report; and empowering auditors to vet the auditable part of the directors' remuneration report).

- **Enhancing compliance**: adopting new measures that would help enhance compliance with the accounting and auditing provisions of the CO (e.g. enhancing certain rights of auditors to ensure truth and comprehensiveness in financial reporting).

- **Cost-saving**: saving compliance and business costs incurred by companies (e.g. relaxing the qualifying criteria for private companies to prepare simplified accounts and facilitating companies to send out summary financial reports to members).

- **The boundary between legislation and accounting standards**: considering different options on whether accounting standards should be either given statutory backing or statutory recognition.

Other Technical and Stylistic Proposals

1.15 Some of the Working Group's proposals are technical and stylistic in nature, such as re-arranging the sequence of the statutory provisions in a more logical and user-friendly order, and updating the terminology used in the provisions. In view of the nature of those proposals, the Government does not consider it necessary to elaborate on them in this paper. All such technical and stylistic amendments will be fully reflected in the White Bill.

Seeking Comments

1.16 The key proposals are described in Chapters 3 to 8 below. To enhance the readability of each proposal, we will start with a brief analysis of the existing law before going into the details of the proposal as well as the relevant rationale. Where appropriate, we will make reference to similar provisions in other common law jurisdictions, such as the UK, Australia and Singapore. The questions for consultation are presented in Chapter 9.

1.17 As the proposed changes will have significant implications for company directors, management, shareholders, investors, creditors, and relevant professionals, we would like to invite public comments before drafting the White Bill for further consultation. The comments received will help us ensure that the relevant legislative proposals will suit Hong Kong's circumstances.

CHAPTER 2

THE EXISTING REGIME

The Existing Regime

2.1 The accounting, auditing and reporting requirements in the CO have developed alongside the key features of a company, namely the separation of owners (i.e. shareholders) from those running the business, and the limitation of the financial liability of the owners to the capital they have provided or agreed to provide. One of the primary purposes of preparing annual accounts and directors' reports under the CO is to provide a stewardship report by the directors to their company's shareholders. A company's management is accountable to its shareholders and other stakeholders. Auditing is essential to ensure the integrity of financial reporting. The placing on public record of audited accounts by public companies provides current and potential creditors, investors and other persons having dealings with the company with information which may assist them in deciding whether or not to do business with the company. At the same time, we have to take into account the interest of private companies, particularly smaller ones, to keep their accounts simple so as to reduce the costs incurred.

2.2 Subject to the provisions mentioned in paragraph 2.3 below, a company is required under the CO to:

- keep proper books of account (section 121);

- prepare a balance sheet and profit and loss account that give a true and fair view of the company's state of affairs and profit or loss for each financial year and are in compliance with the requirements of the Tenth Schedule, so far as applicable (section 123);

- attach an auditors' report to the balance sheet (section 129C);

- prepare a directors' report to be attached to the balance sheet (section 129D);

- send the accounts together with the directors' report and auditors' report to its members and debenture holders before the Annual General Meeting (AGM) (section 129G);

- lay the accounts and reports before the company at its AGM (sections 122, 129C and 129D); and

- (in the case of a public company) file the accounts and reports with the Registrar of Companies (section 109)[10].

2.3 The CO allows for certain exemptions and special arrangements:

- A private company (other than a company which is a member of a corporate group, a banking company, a deposit-taking company, an insurance company, a stock-broking company, a shipping company or an airline company) may prepare simplified accounts for a financial year if all the shareholders agree in writing (section 141D).

- Where a company has subsidiaries at the end of its financial year, group accounts dealing with the state of affairs and profit or loss of the company and its subsidiaries shall be laid before the holding company in general meeting at the same time as its own accounts (section 124).

- A company that has registered as a dormant company must continue to keep books of accounts but is exempt from the obligation to prepare accounts and appoint auditors for as long as it remains dormant (section 344A).

- A listed company may send a summary financial report to its members and debenture holders in place of the full set of accounts and reports, provided that it has obtained the agreement of those persons (sections 141CA to 141CH).

2.4 The rules governing the contents of accounts and reports are at present a mixture of statutory requirements, accounting standards issued by the HKICPA and, in the case of listed companies, Listing Rules promulgated by the SEHK.

[10] While private companies are exempt from having to file accounts with the Registrar of Companies, they may be required to submit them in support of profit tax returns to the Inland Revenue Department. This is not a requirement of the CO, but of section 51 of the Inland Revenue Ordinance (Chapter 112).

Financial Reporting Standards

2.5 The Council of the HKICPA (the Council) is responsible for promulgating accounting and auditing standards in Hong Kong[11]. The HKFRSs now contain an extensive set of the recognition, measurement and disclosure requirements that has been fully converged with the IFRSs since 1 January 2005. This convergence arose from a decision in 2001 by the Council of the then Hong Kong Society of Accountants (HKSA), the HKICPA's predecessor, after broad discussion with interested parties. Over 100 countries have converged with the IFRSs for all or some of their companies or are in the process of doing so. In converging with the IFRSs, Hong Kong stands with other key capital markets such as the European Union.

2.6 The Council is aware that the HKFRSs or IFRSs are more exacting than necessary for many smaller companies. Accordingly, the Council has developed reporting requirements for SMEs that would better meet the needs of users of SME accounts. The SME Financial Reporting Framework and Financial Reporting Standard (SME-FRF & SME-FRS) were released in August 2005 and effective for reporting periods starting on or after 1 January 2005[12]. In general, there are simpler measurement and fewer disclosure requirements under the SME-FRS than the HKFRSs/IFRSs.

2.7 Under the Professional Accountants Ordinance (PAO), certified public accountants (including auditors) are required to observe the HKICPA's professional standards which include, inter alia, the HKFRSs. A certified public accountant who fails or neglects to observe or apply a professional standard is liable to disciplinary action by the HKICPA (section 34 of the PAO). While company directors are required to give a true and fair view of the state of affairs and profit or loss of the company, there is no explicit provision in the CO which requires them to prepare accounts in compliance with the requirements of the HKFRSs or IFRSs.

11 See section 18A of the Professional Accountants Ordinance (Chapter 50).
12 A copy of the SME-FRF & SME-FRS can be downloaded from http://www.hkicpa.org.hk.

Listing Rules

2.8 Under the Listing Rules[13], the accounts of listed companies must normally be drawn up in conformity with the HKFRSs or the IFRSs as issued from time to time by the HKICPA and the International Accounting Standards Board respectively.

The Tenth Schedule

2.9 The Tenth Schedule[14] of the CO comprises a detailed list of disclosure requirements as to the contents of the balance sheet and profit and loss account. The Schedule was first added to the CO in 1974 before the then HKSA started to promulgate accounting standards. While the Tenth Schedule has been amended over the years, it has not been able to keep pace with the very significant developments in financial reporting, which are reflected in the HKFRSs, and is now significantly out of date. In this respect, it is estimated that approximately 75% of the disclosure requirements in the HKFRSs are not found in the Tenth Schedule. Furthermore, the HKFRSs contain recognition and measurement criteria as well as disclosure requirements whereas the Tenth Schedule contains only disclosure requirements.

Financial Reporting Council

2.10 The Financial Reporting Council Ordinance was enacted in July 2006. Upon commencing operation, the Financial Reporting Council (FRC) will be responsible for investigating suspected irregularities of auditors of listed entities in relation to the audit of published accounts or financial statements of such entities and the preparation of financial reports[15] for inclusion in the prospectuses or other listing documents. It will also enquire into suspected non-compliance of the financial reports of such entities with the relevant accounting requirements under the CO, the relevant SFC Codes, Listing Rules, and financial reporting standards. If, after an enquiry, it appears to the FRC that the relevant financial reports do not comply with the relevant requirements or standards, the FRC will be empowered to request a voluntary rectification of financial reports or seek a court order to mandate such a rectification.

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13 See, for example, paragraph 4.11 in Chapter 4 and paragraph 2.1 of Appendix 16 of the Listing Rules (Main Board).

14 See Chapter 8 for a more detailed discussion about the possible way forward for the Tenth Schedule.

15 Commonly known as “reporting accountants” reports.

CHAPTER 3

ACCOUNTING RECORDS AND ACCOUNTS

3.1 The accounting provisions of the CO set out the requirements applicable to various parties in respect of the preparation, approval, dissemination, disclosure and keeping of a company's accounts and related documents or records. This chapter sets out the key proposals of the Working Group in relation to (a) inspection of accounting records; (b) accounting reference date and accounting reference period; and (c) group accounts.

3.2 In addition, the Working Group has proposed to introduce a requirement for a directors' declaration stating that the accounts give a true and fair view of the company's state of affairs and that the company is solvent[16]. The Government considers that the proposed declaration is linked to the question of whether a liability should be imposed on directors for insolvent trading in Hong Kong[17]. As insolvency-related issues, including insolvent trading, will be studied in the second phase of the rewrite, it would be appropriate for the proposed directors' declaration to be considered further in that context. That proposal is therefore excluded from this paper.

Inspection of Accounting Records

3.3 Currently, under section 121(3) of the CO, the accounting records of a company must be open to inspection by the directors at all times. This right is regarded as essential to the performance of the directors' duties, such as keeping proper books of account.

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16 The Working Group has proposed that a company's annual accounts laid in general meeting should be accompanied by a directors' declaration stating whether, in their opinion, (a) the accounts give a true and fair view of the company's financial position and performance; and (b) there are reasonable grounds to believe that their company will be able to pay its debts as and when they fall due. Reference has been drawn from similar provisions in Australia and Singapore, see section 201(15) of the Singaporean Companies Act and sections 295(4) and (5) of the Australian Corporations Act 2001. The Working Group considers that part (a) of the proposal (i.e. declaration on the accounts) would serve to remind directors of their existing obligation under section 123 of the CO to ensure that their company accounts give a true and fair view of the state of affairs of the company. Part (b) (i.e. declaration on solvency) is related to a requirement under the HKFRSs that accounts shall be prepared on a going concern basis.

17 The proposed declaration on solvency is closely related to the concept of insolvent trading. Under the concept, the director of a company has a duty to prevent the company from incurring a debt when he knows or has reasonable grounds to suspect that the company is insolvent or would become insolvent (insolvent trading). If the company engages in insolvent trading and subsequently goes into liquidation, the director may be held liable for the debts incurred by the company while being insolvent. Indeed, the declaration on solvency and the insolvent trading provision co-exist in Australia and Singapore. The issue will be considered together with other insolvency-related issues in the second phase of the rewrite.

3.4 The Working Group proposes that this right should also be extended to the company's other officers, such as company managers and secretaries, to assist those officers in performing their duties in relation to the operation of the company. For example, it is increasingly common for companies to employ managers to operate the company's business and provide financial planning and analysis. Sometimes, company secretaries also assist in the keeping and preparation of the accounting records. The extension of the right to other officers to inspect the company's accounting records should enhance the operation of the company.

3.5 The Working Group also recommends that, on application by a director, the court may authorize a person, such as a certified public accountant, to inspect the accounting records on behalf of the director on such terms and conditions as the court may think fit, including extending or limiting the persons to whom the information so obtained may be passed and the use and the rights to make copies of such information[18]. Similar provisions exist in the company law in Singapore and Australia[19]. The new provision aims to ensure that a director, including an independent non-executive director, would be able to receive necessary support, such as professional support, in discharging his/her duties which have become more extensive and demanding in recent years as a result of numerous initiatives on the corporate governance front.

Question 1 : (a) Should the right of inspecting a company's accounting records be extended beyond directors to other officers of the company (such as managers and secretaries)?

(b) Do you agree that the court may, on application by a director, allow a person to inspect a company's accounting records on behalf of the director on such terms and conditions as the court may think fit?

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18 There is already a similar provision in section 152FA of the CO that allows shareholders of a company, who meet the minimum shareholding or numerical thresholds, to apply for an order from the court to authorize them or their representative to inspect the records of their company. The court must be satisfied that the application is made in good faith and the inspection is for a proper purpose and may make ancillary orders on matters, such as extending or limiting the persons to whom the information so obtained may be passed and the use of such information.

19 See section 199(5) of the Singaporean Companies Act and sections 290(2) to (4) of the Australian Corporations Act 2001.

Accounting Reference Date, Accounting Reference Period and Financial Year

3.6 At present, the CO does not provide for a company's financial year and accounting reference period. Section 122 of the CO requires accounts to be made out in every calendar year, to be laid before the company at its AGM, and those accounts shall be made up to a date falling not more than a specified number of months before the date of the meeting. Section 111 requires that not more than 15 months shall elapse between the date of one AGM and the next. It therefore indirectly requires accounts to be made up for a period of not more than 15 months, but there are no rules on shorter accounting periods.

3.7 In addition, there is currently no provision to regulate the first accounting period, except that the first AGM has to be held within 18 months of incorporation, and accounts are required to be laid before the company at its AGM. In the context of SCCLR's CGR, the SCCLR considered such an indirect way of prescribing the accounting reference period to be both ambiguous and unsatisfactory and proposed that the CO should be amended to provide for an accounting reference date, an accounting reference period and financial year[20].

3.8 Following up on the SCCLR's recommendation, the Working Group proposes that:

(a) ***For a newly incorporated company***[21]**:** The first accounting reference period should be a period of not less than six months, but not more than 18 months, beginning with the date of the company's incorporation and ending with the date which it has appointed as its accounting reference date through a director's resolution. In the absence of such an appointed date, the accounting reference date will be the last day of the month within which the anniversary of its incorporation falls (default accounting reference date)[22]. In either case, its subsequent accounting reference periods should be successive periods of 12 months beginning immediately after the end of the previous

[20] See the SCCLR's *A Consultation Paper on Proposals made in Phase I of the Corporate Governance Review (July 2001)*, paragraphs 25.01 to 25.07.

[21] Including a company which is incorporated after the introduction of the accounting reference date, and an existing company which has not laid any accounts before the company at its AGM since its incorporation e.g. a company which was incorporated just a few months before the introduction of the accounting reference date.

[22] For example, if a company is incorporated on 1 January 2008 and has not appointed any date as its accounting reference date, its first accounting reference period should start from 1 January 2008 and end on 31 January 2009 (i.e. the last day of the month within which the anniversary of its incorporation falls).

accounting reference period and ending with the company's accounting reference date; and

(b) ***For any other company*****:** The accounting reference date should be the day within which the anniversary of the end-date of the company's most recent accounts laid at the AGM (most recent accounts) falls. The first accounting reference period (after the introduction of the accounting reference date) should be the period, beginning immediately after the end-date of its most recent accounts, and ending with its accounting reference date. Its subsequent accounting reference periods should be successive periods of 12 months beginning immediately after the end of the previous accounting reference period and ending with the company's accounting reference date.

3.9 Each company may alter its accounting reference date through a directors' resolution subject to not extending the accounting reference period to more than 18 months. Such alteration however is ineffective if it occurs within five years' time since the last extension of the period, save for the purpose of aligning the accounting reference date with that of its holding company[23]. If the company concerned is a public company, it should also notify the Registrar of Companies of the alteration within 14 days for public information.

3.10 A company's accounting reference period is the same as its financial year except that the company's directors may alter the last day of the financial year by plus or minus seven days, so as to allow for a certain degree of flexibility in fixing the financial year.

Question 2 : (a) Do you agree that the CO should be amended to require each company to have a fixed accounting reference period?

[23] By virtue of section 2 of the CO, "holding company" of a company means any of its holding companies e.g. the immediate holding company, and the holding company of the immediate holding company.

IF YES, do you agree that:

For a newly incorporated company[24]:

(i) it should be allowed to appoint a day as its accounting reference date through a directors' resolution, provided that the first accounting reference period should be (counting from its incorporation date) as mentioned in paragraph 3.8(a):

- **not less than six months?**
- **not more than 18 months?**

(ii) if there is no appointed date under (i) above, the accounting reference date should be the last day of the month of its incorporation anniversary as mentioned in paragraph 3.8(a)?

(iii) in either case, the subsequent successive accounting reference periods should be 12 months each?

For any other company:

(iv) the accounting reference date should be the anniversary of the end-date of the company's most recent accounts laid at its AGM?

(v) the first and subsequent successive accounting reference periods should be 12 months each?

(b) Do you agree that each company should be allowed to alter its accounting reference date through a directors' resolution?

IF YES, do you agree that:

(i) the accounting reference period should not be extended to more than 18 months?

[24] See footnote 21 above.

(ii) such alteration should not occur within five years since the last extension of the accounting reference period, save for the purpose of aligning the accounting reference date with that of its holding company?

(iii) in the case of a public company, the resolution should be filed with the Registrar of Companies for public information?

(c) Do you agree that the CO should be amended to require each company to have a fixed financial year, i.e. the same as the accounting reference period, except that directors may alter the last day of the financial year by plus or minus seven days?

Group Accounts

3.11 Sections 124 and 126 of the CO require a holding company to prepare and lay group accounts before the company that give a true and fair view of the state of affairs and profit or loss of the company and its subsidiaries as a whole. This requirement is in addition to the requirement under section 123 which requires the directors of every company (other than those private companies that prepare simplified accounts under section 141D, see paragraph 7.1 below) to prepare annual accounts that give a true and fair view of the state of affairs and profit or loss of the company.

3.12 The Working Group proposes to remove a holding company's obligation to prepare its own accounts[25] as required under section 123 if it has prepared group accounts and has included its own balance sheet as a note to its group accounts. Such an obligation is not found under either the HKFRSs or IFRSs. However, since the holding company's own balance sheet gives meaningful information, the Working Group recommends that, where the holding company has produced group accounts, its own balance sheet should be included as a note to the group accounts.

[25] At present, a holding company could be exempted from the obligation to prepare its own profit and loss account under section 123(5) of the CO.

3.13 The Working Group also proposes to refine the existing conditions[26] under which a holding company is not required to prepare group accounts along the lines of the HKFRSs. Specifically, the Working Group proposes that, with respect to a particular financial year, a holding company is not required to prepare group accounts if [27] -

(a) it is a wholly-owned subsidiary of another entity; or

(b) it is a partially-owned subsidiary of another entity and has the consent of its other members[28] for not presenting the group accounts.

Question 3 : (a) Should a holding company be relieved from the obligation to prepare its own accounts, provided that it has prepared group accounts and has included its own balance sheet as a note to its group accounts?

(b) Do you agree that the conditions under which a subsidiary is not required to prepare group accounts should be refined as proposed in paragraph 3.13?

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[26] According to section 124(2) of the CO, group accounts shall not be required from a holding company where:

(a) the company is at the end of its financial year the wholly owned subsidiary of another body corporate; or

(b) its directors are of an opinion that the group accounts shall not deal with its subsidiaries because in respect of each of these subsidiaries:

(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 (subject to the Financial Secretary's approval); or

(iii) the business of the company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.

[27] It is the Working Group's intention that these "core" requirements proposed to be included in the CO and other requirements under Hong Kong Accounting Standard (HKAS) No. 27 should complement each other.

[28] Recommendation (b) originates from the existing HKAS No.27, which has a lower threshold, i.e. it is a partially-owned subsidiary of another entity and its other members do not raise objection to not presenting the group accounts.

CHAPTER 4

DIRECTORS' REPORT AND DIRECTORS' REMUNERATION REPORT

4.1 This chapter sets out the Working Group's recommendations on improving the provisions relating to the directors' report and introducing provisions regarding the directors' remuneration report into the CO. In general, the Working Group recommends greater disclosure obligations to enhance transparency and to provide more forward-looking information, taking into account similar provisions in the company law of the UK, Australia and Singapore.

Directors' Report

4.2 The directors' report is basically a report of the company information that people may wish to know about but is not included in the accounts. Section 129D of the CO sets out the detailed information required. The report must be approved by the board of directors and signed on its behalf either by the chairman of the meeting at which it is approved or by the secretary of the company. A copy of the report must be sent to every member and debenture holder of the company together with a copy of the accounts and the auditors' report.

Business Review

4.3 The Working Group proposes to require companies (unless otherwise exempted, see paragraphs 4.6, 7.9 and 7.11 below) to prepare, as part of the directors' report, a business review[29] which is more analytical and forward-looking than the information currently required. Specifically, the business review should include, among other things:

(a) a fair review of the business of the company;

(b) a description of the principal risks and uncertainties facing the company;

(c) particulars of any important events affecting the company which have occurred since the end of the financial year;

[29] The proposed business review is similar to the business review which all companies (except small companies) in the UK have to cover in their directors' reports, see section 234ZZB of the UK Companies Act 1985 and section 417 of the UK Companies Act 2006.

(d) an indication of likely future developments in the business of the company; and

(e) a balanced and comprehensive analysis of the development, performance or position of the business of the company and, to the extent necessary for an understanding thereof, including:

(i) analysis using financial key performance indicators[30]; and

(ii) where appropriate, analysis using other non-financial key performance indicators, including information relating to environmental matters and employee matters.

4.4 On paragraph 4.3(e)(ii), the SCCLR has recommended that information relating to environmental and employee matters should be given if such matters have a significant impact on the company. It has further recommended that when drafting the relevant provisions, reference could be made to paragraph 52 of the Appendix 16 to the Listing Rules (Main Board)[31]. This paragraph sets out the recommended additional disclosures to be made in the management discussion and analysis prepared by listed companies, thereby encouraging them to disclose in their annual report information relating to environmental and employee matters. The proposed requirement to include in the directors' report information relating to environmental and employee matters that have a significant impact on the company is in line with the international trend to promote corporate social responsibility[32]. Shareholders and investors, particularly those of listed companies, are increasingly interested in such information. In other jurisdictions such as the UK

30 "Key performance indicators" is a generic term which is intended to refer to factors by reference to which the development, performance or position of the business of the company can be measured effectively.

31 Paragraph 52 of the Appendix 16 to the Listing Rules (Main Board) provides, inter alia:

- a discussion on the company's environmental policies and performance, including compliance with the relevant laws and regulations; and
- an account of the company's key relationships with employees, customers, suppliers and others, on which its success depends.

32 Corporate social responsibility is about how business takes account of its economic, social and environmental impacts in the way it operates – maximizing the benefits and minimizing the downsides. (Quoted from the website of the UK Government on Corporate Social Responsibility *http://www.societyandbusiness.gov.uk/whatiscsr.shtml*). The issue has drawn the attention of a number of advanced countries in recent years. For example, the increasing trend and demand for companies to be socially responsible has been acknowledged by the Australian government in a report entitled "The Social Responsibility of Corporations". The report was published by the Australian Corporations and Markets Advisory Committee in December 2006 (available at http://www.camac.gov.au).

and Australia, companies are required to include in the directors' report information on environmental and/or employee matters[33].

Question 4 : Should companies (unless otherwise exempted as proposed in paragraphs 4.6, 7.9 and 7.11) be required to prepare a more analytical and forward-looking business review along the lines of paragraph 4.3?

Question 5 : Do you have any suggestions on the information that should be included in the financial and non-financial key performance indicators, a generic term which is intended to refer to factors by reference to which a company's business can be measured effectively?

Question 6 : Do you have any other suggestions on matters that should be covered in the business review?

Other Additional Disclosure Requirements

4.5 The Working Group also proposes that, unless otherwise exempted (see paragraphs 4.6, 7.9 and 7.11 below), the disclosure requirements in a directors' report should be expanded along the following lines:

(a) ***Asset values*****:** If, in the directors' honest and reasonable opinion, the market value of the non-current operating assets shown on the balance sheet as consist of interests in land and buildings, such as office premises and factories which are intended for use in their company's activities on a continuous basis, differs substantially from the amount at which they are included in the balance sheet, and the difference is of such significance that the attention of members of the company should be drawn to it, the report should indicate the difference in valuation with such degree of precision as is practicable. This proposal aims to enhance the transparency of the financial position of the company. It is worth noting that the Working Group's intention is that directors are not expected to obtain a valuation from an independent valuer so as to comply with the requirement. It would suffice for them to obtain the information through sources such as newspapers or sale of a comparable property in the same building. As such, there would

[33] See footnote 29 above about the relevant UK provisions. Section 299(1)(f) of the Australian Corporations Act 2001 provides that a company's directors' report should give details of the company's performance in relation to environmental regulations if the company's operations are subject to any particular and significant environmental regulation.

not be any significant implications for the operating costs of companies. This approach, however, may give rise to questions about the reliability and comparability of the asset value figures presented in the directors' reports. There is a need to strike a balance between the implications for operating costs and the need to ensure the reliability and comparability of the asset value information in the directors' report.

(b) ***Equity linked agreements*****:** Information on any equity linked agreements[34] which either subsist at the end of the financial year or the company has entered into in the financial year should be provided if there is a possibility that the issue of shares under such agreements has a potential to dilute existing shareholders' interests. This proposal aims to enhance the protection of the shareholders' interests in their companies[35].

Question 7 : Should directors' reports (unless otherwise exempted) be required to include information on:

(a) any significant difference in valuation between the market value of the company's non-current operating assets shown on the balance sheet as consist of interests in land and buildings and its book value to the extent practicable and, if so, what should be the appropriate information sources?

(b) equity linked agreements which subsist at the end of the financial year or which the company has entered into in the financial year, if the issue of shares under such agreements has a potential to dilute existing shareholders' interests?

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34 Equity linked agreement should include any agreement that will and may result in the company issuing new shares including convertible securities (such as convertible bonds and debentures), warrants and share option schemes or any agreement requiring the company to enter into such an agreement.

35 At present, section 129D(3)(g) of the CO provides that, if, in the financial year, a company has issued any shares, the directors' report is required to provide information regarding the issue. However, the requirement does not cover equity-linked agreements. There is a possibility that the issue of shares under such agreements has a potential to dilute existing shareholders' interests or that the agreements require companies to make conversions at an unreasonable price relative to the current share price. In an efficient and transparent share market, transactions should occur at transparent prices and under fair conditions that protect shareholders' interests.

Exemption of Certain Private Companies and Guarantee Companies from the New Requirements

4.6 As the additional disclosure requirements relating to the business review and asset values proposed in paragraphs 4.3 and 4.5(a) above may be burdensome and cause compliance difficulties for private companies, particularly smaller ones, the Working Group recommends that private companies which meet certain qualifying criteria should be exempted (see Chapter 7, particularly paragraph 7.9 below for details). Such exemption should also be applied to small guarantee companies which meet certain qualifying criteria (see paragraph 7.11 for details).

Statement as to Disclosure of Information to Auditors

4.7 The Working Group recommends that a directors' report should contain a statement to the effect that in the case of each of the directors at the time the report is approved:

- so far as the director knows, there is no relevant audit information of which the auditors are unaware; and

- the director has taken all the steps he should have taken as a director to make himself aware of such information and to establish that the auditors are aware of it.

4.8 This proposal is based on section 234ZA of the UK Companies Act 1985[36]. It is the responsibility of the directors to approve and sign off accounts as a true and fair reflection of the position of the company. Part of the auditors' job is to opine on that judgment. It is important for directors to be aware of their responsibility in relation to their auditors and, in particular, to be aware of the importance of ensuring that the auditors have all the information they need in order to come to their opinion. The proposed requirement aims to ensure that each director will have to think hard about whether there is any information that he knows about or could ascertain, which is needed by the auditors in preparation of their report. In order to achieve this, directors will have to make enquiries with their fellow directors and the company's auditors, and take such other steps, if any, as required by their duties as directors to exercise reasonable care, skill and diligence. It will be an offence if the statement in the directors' report is false and that the director knew that it was false, or was reckless as to whether it was false,

[36] To be replaced by section 418 of the UK Companies Act 2006 which is substantively the same in substance.

and failed to take reasonable steps to prevent the report from being approved.

Question 8 : Should directors' reports contain a statement to the effect that, so far as each director knows, there is no relevant audit information of which the auditors are unaware, and that each director has taken all the steps he should have taken to make himself aware of such information and to establish that the auditors are aware of it?

Directors' Remuneration Report

4.9 In recent years, there has been increasing public concern over the remuneration of the directors of listed companies. In Phase II of the CGR, the SCCLR recommended that the level of transparency in respect of the disclosure of directors' remuneration packages should be raised so as to enhance accountability to members. The main proposals [37] concerning the CO are as follows:

- The CO should be amended to require listed companies to disclose individual directors' remuneration packages by name in their annual accounts.

- The CO should be amended to require an unlisted public company or private company to disclose full details of all elements of individual directors' remuneration packages by name in their annual accounts if directed to do so by holders of not less than 5% of the nominal issued share capital of the company.

4.10 To implement the SCCLR's recommendations, the Working Group proposes to restructure and reform sections 161, 161A, 161B, 161BA, 161BB and 161C of the CO, taking into account the provisions on directors' remuneration and other benefits of directors etc. in the UK Companies Act 1985[38]. The principal requirements to give information should be placed in the body of the CO and the detailed disclosure

[37] See SCCLR, *A Consultation Paper on Phase II of the Corporate Governance Review by the SCCLR* (June 2003), paragraph 16.23. The SCCLR also made a number of proposals concerning amendments to the Listing Rules.

[38] Mainly sections 232 and 234B and Schedules 6 and 7A of the UK Companies Act 1985. The new regulations to be made under the UK Companies Act 2006, which will replace Schedules 6 and 7A, are not yet available.

requirements[39] in the subsidiary legislation to the CO to facilitate future amendments. More detailed information should be required regarding directors' remuneration from listed than unlisted companies unless members of an unlisted company holding not less than 5% of the nominal issued share capital of the company or, in the case of a company not having a share capital, members representing not less than 5% of the total voting rights of all the members request such detailed information.

4.11 For all listed companies incorporated in Hong Kong, and those unlisted companies where holders of not less than 5% of the issued share capital or, in the case of a company not having a share capital, members representing not less than 5% of the total voting rights of all the members so request, there should be a separate directors' remuneration report. The report should cover various types of benefits given to the individual directors, including the basic salary, fees, housing and other allowances, benefits in kind, pension contributions, bonuses, compensation for loss of office and long-term incentive schemes including share options. The report should be approved by the board of directors and signed on behalf of the board by a director. Similar disclosure requirements applicable to all listed companies have been incorporated into the Listing Rules[40].

4.12 With the exception of service contracts, the information in the report is subject to audit. To facilitate digestion of the information by members, there should also be a general provision to require the information shown in the directors' remuneration report that is subject to audit to show the corresponding amounts for the financial year immediately preceding that to which the accounts relate.

Question 9 : Do you agree that a separate directors' remuneration report should be prepared by:

(a) listed companies incorporated in Hong Kong; and

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39 The detailed disclosure requirements are proposed to be divided into four parts, namely (a) emoluments of directors, pensions of directors and past directors, compensation for loss of office to directors and past directors and sums paid to third parties in respect of directors' services; (b) loans, quasi-loans and other dealings in favour of directors and connected persons; (c) transactions, arrangements and agreements made by the company or a subsidiary for officers other than directors; and (d) special provisions for authorized financial institutions.

40 See paragraph 24 of Appendix 16 and paragraph 17.07 in Chapter 17 of the Listing Rules (Main Board).

(b) unlisted companies incorporated in Hong Kong where holders of not less than 5% of the issued share capital or, in the case of a company not having a share capital, members representing not less than 5% of the total voting rights of all the members so request?

IF YES, do you agree that the remuneration report should disclose full details of various types of benefits given to the individual directors by name, including basic salary, fees, housing and other allowances, benefits in kind, pension contributions, bonuses, compensation for loss of office and long-term incentive schemes including share options?

CHAPTER 5

SUMMARY FINANCIAL REPORT

The Existing Regime

5.1 Under section 129G of the CO, the accounts together with directors' and auditors' reports (collectively named as "financial documents" within this Chapter) should be laid before a company in general meeting and sent to every member and debenture holder of the company (generally known as "entitled persons") at least 21 days before that meeting.

5.2 For listed companies, the full set of accounts is often fairly long. Whilst the information in the financial documents is of interest to sophisticated investors, the complexity and volume of the information might discourage retail investors from reading them. The printing of such documents also results in significant paper consumption and, as such, is not environmentally friendly. To facilitate entitled persons to better comprehend the operation of a listed company, the CO was amended in 2001 to allow a listed company to send a summary financial report in place of the full set of financial documents to its entitled persons for the purposes of its general meeting. Such a summary financial report contains the basic information which is pertinent to entitled persons without going into every detail. An entitled person will continue to have the right to choose to receive the full set of financial documents.

5.3 The principal provisions in the CO regarding the sending of summary financial reports by listed companies, namely sections 141CA to 141CH, and the Companies (Summary Financial Reports of Listed Companies) Regulation came into effect on 4 January 2002. So far, only very few listed companies offer the alternative of providing summary financial reports to members. This is partly due to cost considerations[41] and partly because the company concerned has to obtain the members' consent by complying with very complex rules for sending notification to and receiving a response from the members.

[41] For example, savings from printing summary financial reports cannot cover the costs of preparing a summary financial report and paying the auditor for an opinion on it.

Working Group's Proposal

5.4 Against this background, the Working Group has proposed to make the relevant provisions more user-friendly. This may also help save operating costs. The key proposals and their rationale are summarized as follows:

(a) The summary financial report regime should be extended to all companies incorporated in Hong Kong except for those preparing simplified accounts under section 141D (see Chapter 7 below). The Working Group notes that, due to the full convergence of the HKFRSs with the IFRSs, accounts are bound to become more complex. In view of this, a significant number of members may prefer to receive the summary financial reports instead and consider this sufficient for their purposes. In addition, those companies should also be given a choice of sending a hard copy of the financial documents or summary financial reports to their members insofar as the interests of the members are protected as explained in item (b) below. Other jurisdictions like the UK and Australia have extended the option to issue summary financial reports to all companies that have had their full accounts audited[42].

(b) All companies (other than those applying section 141D) should be given the choice of sending to their members a hard copy of the financial documents or the summary financial report. This will avoid the very complex rules which require a company to ask its members in advance before it can send them a hard copy of the summary financial report. Where a company has chosen to send its members a hard copy of the summary financial report instead of the financial documents, the members have the option to request that the company sends them a hard copy of the financial documents.

(c) At a member's request, or with his consent in writing, a company should send him an electronic copy, in lieu of a hard copy, of the financial documents or the summary financial report under item (b) above.

[42] See section 251 of the UK Companies Act 1985 and the UK Companies (Summary Financial Statement) Regulations 1995. The new regulations to be made under the UK Companies Act 2006, which will replace the UK Companies (Summary Financial Statement) Regulations 1995, are not yet available. In Australia, the summary financial report is called the concise report (see section 314 of the Australian Corporation Act 2001). Detailed form and contents of the concise report are set out in the accounting standards, namely Australian Accounting Standards Board Standard No.1039 (Concise Financial Reports).

(d) At a member's request, a company should not send him a copy, whether hard or soft, of the financial documents or the summary financial report. Currently, listed companies in Hong Kong are not entitled to not send out the financial documents. In this respect, the Working Group notes that, in Australia, the full or concise reports need not be sent if members so request[43]. Similarly, in Singapore, the sending of the financial documents or the summary financial report to a member may also be dispensed with if the member has notified the company in writing[44].

(e) As the Working Group has made recommendations to amend the accounting and auditing provisions of the CO and extend the summary financial report regime to unlisted companies, the requirements for the form and contents of summary financial reports should be amended and updated where appropriate.

(f) The definition of the term "entitled persons" should be amended to cover persons who *would* be entitled to receive accounts such as potential shareholders along the lines as the company law of the UK and Singapore[45]. In the UK and Singapore, the definition of the term "entitled persons" uses the words "are or would ….. be entitled to be sent copies of those documents". The word "would" implies that the company may ascertain in advance whether a person wishes to receive the full set of financial documents or only summary financial reports before he becomes entitled under the law. The Working Group considers that a company can therefore ascertain a potential buyer's wishes in an initial public offering or the potential shareholders' wishes in a takeover situation or where the company is going to split, so that the company does not need to write to the buyers or shareholders twice.

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43 See section 316(1)(a) of the Australian Corporations Act 2001.

44 See section 203A(3) of the Singaporean Companies Act and regulation 3(1)(f)(iii) of the Singaporean Companies (Summary Financial Statement) Regulations.

45 See the definition of "entitled persons" in section 251(1) of the UK Companies Act 1985 and regulation 2 of the Singaporean Companies (Summary Financial Statement) Regulations.

Question 10 : We aim to revise the provisions regarding summary financial reports to make them more user-friendly from the company's as well as the members' viewpoints. Would you support amending the provisions along the lines as suggested in paragraph 5.4? Do you have any specific suggestions as to the form or contents of the summary financial reports?

CHAPTER 6

AUDITING PROVISIONS

The Existing Regime

6.1 Under the CO, every company, whether public or private, is required to appoint an auditor. The auditor's role is fundamental in ensuring both truth and comprehensiveness in financial reporting. The importance of reliable accounts cannot be overstated. Many stakeholders, including shareholders, investors, creditors, regulators and the tax authorities, rely on such statements. Furthermore, the auditing requirement is a fundamental element of our corporate governance regime. This is particularly so, as in Hong Kong, unlike some other common law jurisdictions like the UK, private companies are not required to file their accounts with the Registrar of Companies for public inspection. In view of these considerations, the Working Group believes that the current auditing requirement should continue to apply to both public and private companies. Nevertheless, in order to reduce the compliance costs of private companies particularly smaller ones, the Working Group proposes to amend the provisions regarding small private companies, currently found in section 141D of the CO, to facilitate the introduction of simplified accounting and disclosure requirements that would be applicable to eligible companies. The relevant proposals are explained in detail in Chapter 7 below.

6.2 The SCCLR has suggested a number of proposals for reform relating to auditing in its CGR[46]. Building on the SCCLR's recommendations, the Working Group puts forward a number of proposals on improving the auditing provisions in the CO as set out in paragraphs 6.3 to 6.9 below.

Providing Auditors with Qualified Privileges

6.3 Noting the increasingly important functions that auditors are required to perform on the corporate governance front, the Working Group proposes to provide auditors with qualified privileges for statements made in the course of their duties as auditors and in respect of their resignation as auditors. In this regard, the Working Group suggests adding a new

[46] In addition to the example cited in footnote 9 above, the SCCLR put forward further proposals in Phase II of the Review, such as a proposal to amend section 141(5) of the CO to enhance auditors' access to information. See *Corporate Governance Review by SCCLR - A Consultation Paper on Proposals made in Phase II of the Review* (June 2003), Chapter 5.

provision along the lines of section 208 of Singaporean Companies Act. The new provision[47] should provide that auditors will not, in the absence of malice on their part, be liable to any action for defamation[48] at the suit of any person in respect of any oral or written statement which they make in the course of their duties as auditors and in respect of their resignation as auditors under the CO. The proposed privileges should also be extended to persons who publish any document prepared by the auditors in the course of their duties as auditors and in respect of their resignation under the CO.

Question 11 : Should auditors be given qualified privileges for statements made in the course of their duties as auditors and in respect of their resignation as auditors under the CO?

<u>IF YES</u>, do you agree that the proposed privileges should be extended to persons who publish any document prepared by the auditors in the course of their duties as auditors and in respect of their resignation under the CO?

Strengthening Auditors' Rights to Information

6.4 To ensure that an auditor will be in a position to perform his oversight functions in an effective manner, the Working Group considers that it is important for him to have access to the relevant information regarding the state of affairs of the company. The proposed requirement for directors to make a statement as to disclosure of information to auditors mentioned in paragraphs 4.7 and 4.8 above would enhance the likelihood that auditors will get all relevant information from the directors. Furthermore, the Working Group proposes to extend the range of persons from whom auditors can require information. The auditors' current rights to information as set out in sections 133(1) and 141(5) of the CO are considered to be too restrictive[49]. A new provision should be drafted along the lines of section 389A of the UK Companies Act 1985[50]. It

47 The Working Group has proposed that the qualified privileges should also apply to the duties of auditors under the PAO and any other law. In view of the scope and nature of the extension, this issue will be looked into further outside the context of the rewrite of the CO.

48 The proposed section shall not limit or affect any other right, privilege or immunity that an auditor or other person has as a defendant in an action for defamation.

49 For example, under section 141(5), the auditor may request only the "officers" (namely, directors, managers and secretary) of the company, but not company employees, to provide information.

50 To be replaced by sections 499 and 500 of the UK Companies Act 2006 which are substantively the same in substance.

should allow auditors to require "specified persons"[51] to provide them with information, explanations or other assistance as they think necessary for the performance of their duties as auditors. A person who fails to comply with the request of the auditors would commit an offence, unless he can prove that it is not reasonably practicable to comply with the request.

6.5 Where a holding company has a subsidiary undertaking which is not a body corporate incorporated in Hong Kong, the auditor may also require the holding company to obtain from the relevant persons or parties, such as the undertaking concerned or the officer, employee or auditor of the undertaking concerned, such information, explanations or other assistance as the auditor may reasonably require for the purposes of his duties as auditor[52]. The holding company and every officer of it who is in default will commit an offence if the holding company fails to take all steps reasonably available to obtain the information, explanations or other assistance from the relevant persons or parties as requested by the auditor.

Question 12 : Should the auditors' rights to information be enhanced so that they can require "specified persons", as mentioned in footnote 51, to provide them with information, explanations or other assistance as they think necessary for the performance of their duties as auditors?

Question 13 : Where a holding company has a subsidiary undertaking which is not a body corporate incorporated in Hong Kong, should the auditor have the right to require the holding company to obtain from the relevant persons or parties such information, explanations or other assistance as the auditor may reasonably require for the purposes of his duties as auditor?

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[51] Including officers or employees of the company; any person holding or accountable for any of the company's books, accounts or vouchers; any subsidiary undertaking of the company, which is a body corporate incorporated in Hong Kong; any officer, employee or auditor of such undertaking; any person holding or accountable for any books, accounts or vouchers of such undertaking; plus any person falling within the said categories at a time to which the information required by the auditor relates.

[52] In the light the proposed provision, as well as the outcome of the consultation on the Corporate Governance Review conducted by the SCCLR, we see no need for a requirement for directors and auditors of subsidiaries to volunteer information which they believe would have an effect on the audit to the auditor of a company. Consequently, it is proposed to repeal section 133(1)(a) of the CO.

Outgoing and Resigning Auditors

6.6 To ensure effective and continuous oversight, there should be proper transitional arrangements in the event of any changes in the auditor of a company. In practice, sudden or frequent changes in auditors often lead to market speculations. Thus, while noting that there are legitimate reasons for changes in auditors, such as disagreement on fees, the Working Group considers that the existing provisions regarding the rights as well as the duties of the outgoing and incoming auditors should be enhanced. For example, an outgoing auditor should be allowed to give the incoming auditor information that he became aware of in his capacity as auditor. At present, an outgoing auditor needs to seek the company's permission to discuss the affairs of the company with the incoming auditor because of the principle of confidentiality[53]. Moreover, the outgoing auditor may be in breach of his contract with the company.

6.7 Under section 140A of the current CO, a resigning auditor is required to make a statement in the notice of resignation as to whether there are any circumstances or not in relation to his resignation that he considers should be brought to the notice of the members or creditors of the company. The Working Group proposes that the requirement should be extended to outgoing auditors (in addition to the resigning ones) to provide a statement of any circumstances connected with his ceasing to hold office[54] that he considers should be brought to the attention of the members or creditors of the company or a statement of no such circumstances.

6.8 The company must within 14 days either circulate the statement to every entitled person, or apply to the court for an order that the statement should not be sent out. If the outgoing auditor is not informed within 21 days of giving the statement that the company is applying to court, he must send a copy of the statement to the Registrar of Companies within a further 7 days[55]. The existing rights of outgoing auditors to attend, speak at and receive communications about company meetings in respect of their cessation of office should remain essentially unchanged.

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53 This imposes an obligation on the outgoing auditors to refrain from disclosing confidential information acquired as a result of their professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose.

54 It should cover an auditor who ceases to hold office for any reasons and not just a resigning auditor.

55 Under the current section 140A of the CO, it is the duty of the company to send a copy of the statement to the Registrar of Companies and members of the company. Under the new provision, the auditor has a duty to send a copy of the statement to the Registrar of Companies.

Question 14 : Should an outgoing auditor be allowed to give the incoming auditor information that he became aware of in his capacity as auditor without seeking permission of the company?

Question 15 : Should all outgoing auditors (i.e. auditors who cease to hold office for any reasons) be required to provide a statement of any circumstances connected with his ceasing to hold office that he considers should be brought to the attention of the members or creditors of the company or a statement of no such circumstances?

Other Recommendations

6.9 The Working Group has also put forward a number of other recommendations to improve the clarity and operation of the auditing provisions in the CO. Of those, the more significant ones are as follows:

(a) requiring auditors to report on any inconsistencies between the audited accounts and financial information contained in other parts of the annual report, such as the directors' report;

(b) requiring auditors to report on the auditable part of the directors' remuneration report if such a report is prepared (see paragraph 4.11 above);

(c) clarifying that an auditor's term of appointment ceases when a liquidator[56] is appointed[57]; and

(d) removing the existing requirement of fixing the auditors' remuneration by a company in a general meeting[58], and allowing directors to fix the auditors' remuneration.

Question 16 : Do you agree with the proposed amendments to the auditing provisions as set out in paragraph 6.9?

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56 The expression "liquidator" for the purpose of determining an auditor's term of appointment should exclude a provisional liquidator.

57 Sections 131 and 132 contain provisions on the termination of an auditor's office. However, no reference is made to the termination of an auditor's office upon the appointment of a liquidator who will be responsible for ensuring that the company's accounts are properly preserved and checked. The Working Group considers that this should be clarified.

58 The current requirement for the auditors' remuneration to be fixed at AGMs in section 131(8)(b) of the CO no longer reflects the current practice. Nevertheless, a company can still fix the auditor's remuneration at AGMs if it so wishes.

CHAPTER 7

CERTAIN EXEMPTIONS FOR PRIVATE COMPANIES AND COMPANIES LIMITED BY GUARANTEE

Certain Exemptions for Private Companies

7.1 Section 141D of the CO provides that a private company (other than a company which is a member of a corporate group, a banking company, a deposit-taking company, an insurance company, a stock-broking company, a shipping company or an airline company) may, with the agreement of all the shareholders in writing, prepare simplified accounts in respect of one financial year at a time. The section also sets out the requirements for the balance sheet, directors' report and auditors' report of such private companies. Specifically, there is no obligation[59] to prepare accounts showing a "true and fair view" and a shorter schedule (namely the Eleventh Schedule) of specific items of disclosure in the balance sheet is stipulated.

SME Financial Reporting Framework and Financial Reporting Standard

7.2 As noted in paragraph 2.6 above, the HKICPA has taken note of the special reporting needs of SMEs and issued the SME-FRF & SME-FRS in August 2005. Under the SME-FRF, a company incorporated in Hong Kong qualifies for reporting under the SME-FRF if it satisfies the criteria set out in section 141D of the CO, i.e. mainly a private company with the unanimous agreement in writing by all its shareholders. A non-Hong Kong incorporated company, subject to any specific requirements imposed by the law of its place of incorporation and subject to its constitution, qualifies for reporting under the SME-FRF if it is considered to be an SME in terms of size and does not have public accountability[60], and all its owners agree to prepare the accounts in accordance with the SME-FRS.

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59 The accounts are required to comply with the "true and correct view" requirements under section 141D(1)(e)(ii). For more details on the Working Group's discussion on this requirement, see paragraphs 8.12 and 8.13 below.

60 A company has public accountability for the purposes of the SME-FRF if it is (a) an issuer of publicly traded equity or debt securities in the current or preceding reporting period; (b) an institution authorized under the Banking Ordinance; (c) an insurer authorized under the Insurance Companies Ordinance; or (d) granted a licence under the Securities and Futures Ordinance to carry on business in a regulated activity in Hong Kong.

7.3 A company is considered to be an SME under the SME-FRF if it satisfies at least two of the following conditions:

(a) Total annual revenue of not more than HK$ 50 million[61].

(b) Total assets of not more than HK$ 50 million at the balance sheet date.

(c) No more than 50 employees[62].

7.4 In order to provide a stable environment to prevent companies from moving in and out of the SME-FRF, the SME-FRF provides that, when a company has not been considered to be an SME in terms of its size and subsequently becomes an SME, the company will not qualify for reporting under the SME-FRF until it has been determined to be an SME for two consecutive reporting periods[63]. Similarly, where a company has previously qualified for reporting under the SME-FRF, the company will no longer qualify for reporting under the SME-FRF only after it is no longer an SME for two consecutive reporting periods.

Relaxing the Qualifying Criteria for Exemptions

7.5 The Working Group has reviewed the qualifying criteria for exemptions for Hong Kong incorporated companies under section 141D[64], taking into account the proposals of the Generally Accepted Accounting Principles for Small Businesses Working Group of the HKICPA and the views of the SCCLR. It considers that:

(a) the qualifying criteria for Hong Kong incorporated companies (whether standalone companies or members of a group of companies) under section 141D should generally be aligned with those for companies incorporated outside Hong Kong to provide a level playing field for both types of companies; and

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61 The total revenue and total assets are determined after the application of the SME-FRS and in cases where the reporting period is shorter or longer than a year, the total revenue is determined on an annualised basis.

62 The number of employees is the average number of persons employed by the company during the reporting period (irrespective of whether in full-time or part-time employment) determined on a monthly basis. The method of calculation is set out in paragraph 26 of the SME-FRF.

63 A company that qualifies as an SME in its first financial year following the implementation of the SME-FRS or on incorporation would qualify for reporting under the SME-FRF. There is no need to satisfy the two years' rule.

64 The references to section 141D are purely indicative as the section numbers will change significantly in the rewrite of the CO.

(b) SMEs should generally be allowed to obtain relief from the burden of full reporting requirements, subject to adequate safeguards such as absence of shareholder's dissent and continuing to prohibit companies with a public interest dimension from using section 141D.

7.6 Consequently, the qualifying criteria are proposed to be relaxed along the following lines:

(a) A private company that qualifies as a "small company" should be allowed to apply the provisions of section 141D automatically without any requirement for shareholders' consent.

(b) The definition of a "small company" should be based on the same size criteria and qualifying conditions for non-Hong Kong incorporated SMEs in the SME-FRF as described in paragraphs 7.3 to 7.4 above.

(c) For other private companies, subject to sub-paragraphs (d) to (f) below, the current requirement of unanimous agreement in writing by all the shareholders on a yearly basis should be relaxed. A private company should be allowed to apply section 141D and the SME-FRF & SME-FRS provided that the shareholders holding at least 75 percent in nominal value of the shares agree in writing and no shareholders object. Once the company elects to apply the provisions of section 141D on a continuous basis, the agreement should remain in force until either there is a change in the shareholding or the agreement is revoked by a shareholder.

(d) The current prohibition for a private company which has any subsidiary or is a subsidiary of another company formed and registered under the CO to apply section 141D should be removed. In addition, a private company which is the holding company of a small group of companies should be allowed to apply section 141D and prepare group accounts provided that the size criteria of a "small group" or the shareholders' consent requirement are met.

(e) Regarding the definition of a “small group”, a group of companies should be qualified as a “small group” in a year if it satisfies at least two out of the following conditions:

- Aggregate total annual revenue[65] of not more than HK$50 million net for that year.
- Aggregate total assets[66] of not more than HK$50 million net at the balance sheet date.
- No more than 50 employees.

(f) While retaining the current restrictions for certain private companies (such as a banking, insurance, stock-broking and deposit-taking company) to apply section 141D for public interest or regulatory reasons, the current prohibition for a company that owns or operates ships or aircraft engaged in the carriage of cargo between Hong Kong and a place outside Hong Kong to apply section 141D should be removed. It is considered to be an anachronism which is no longer appropriate.

7.7 Subject to public support for these proposals, the HKICPA will be invited to consider making suitable amendments to the SME-FRF in respect of the qualifying criteria for both Hong Kong and non-Hong Kong incorporated companies and the SME-FRS in respect of the preparation of group accounts.

Question 17 : (a) Do you agree that the qualifying criteria for exemptions from certain accounting provisions for private companies under section 141D should be relaxed along the lines as suggested in paragraph 7.6?

65 In relation to the aggregate figures for total revenue, “net” means after making the set-offs and other adjustments in the case of group accounts for transactions between members of the group. The figures for aggregate total annual revenue shall be those included in the group accounts prepared under section 141D of the CO for the relevant financial year.

66 In relation to the aggregate figures for total assets, “net” means after making the set-offs and other adjustments in the case of group accounts for transactions between members of the group. The figures for aggregate total assets shall be those included in the group accounts prepared under section 141D of the CO for the relevant financial year.

(b) **Specifically, do you agree that the size criteria set out in paragraphs 7.3 and 7.6(e), i.e. (aggregate) total annual revenue, (aggregate) total assets and number of employees are the right criteria? <u>IF YES</u>, do you agree with the proposed thresholds?**

Preparation of Accounts

General

7.8 At present, sections 141D(1)(b) and (c) require the balance sheet of a company applying section 141D to comply only with the Eleventh Schedule and there shall be attached to the balance sheet a directors' report containing certain specific information. A profit and loss account is still required to be prepared by the company due to the lack of exemption from sections 122(1) and 129C of the CO. However, pursuant to section 141D(1)(e), the auditors' report of a company which applies section 141D covers only the balance sheet but not the profit and loss account. In comparison with the requirements under section 141D, the SME-FRS requires a more complete set of accounts and more disclosures. The Working Group therefore suggests that section 141D should be amended to require a company applying the section to prepare a full set of accounts dealing with the state of affairs and profit or loss of the company as required under the SME-FRS. Section 141D should also be amended to require a holding company to prepare group accounts. Consequently, the auditors' report should be expanded to cover all those accounts.

Question 18 : Should section 141D be amended to require a private company applying the section to prepare a full set of accounts dealing with the state of affairs and profit or loss of the company as required under the SME-FRS and, in the case of a holding company, also to prepare a full set of group accounts?

Directors' Report

7.9 As noted in paragraph 4.6 above, section 141D companies should be relieved from the burden of full reporting requirements in the directors' report, particularly those new requirements relating to business review and asset values. Consequently, the Working Group suggests that those companies should be required to prepare a simplified directors' report only, which should contain the following general requirements of a directors' report:

- the names of the directors;
- the principal activities of the company;
- the particulars of any other matters that are material for the appreciation of the state of the company's affairs;
- a statement as to disclosure of information to auditors (see paragraph 4.7 above);
- the directors' interests in the company or its subsidiaries, etc.;
- the shares issued and equity-linked agreements entered into by the company (see paragraph 4.5(b) above); and
- the management contracts entered into by the company.

Question 19 : Should "section 141D companies" be required to produce only simplified directors' reports along the lines of paragraph 7.9?

Companies Limited by Guarantee

7.10 At present, while most companies incorporated under the CO are companies limited by shares, there are some 8 000 companies which are limited by guarantee[67] (guarantee companies). Guarantee companies are often set up for non-profit making purposes, such as educational, charitable, religious or community-related purposes. The vast majority of them[68] do not fall within the category of private companies and are therefore treated as public companies under the CO. As such, they are subject to the relevant requirements, which are applicable to public companies, such as filing annual accounts with the Registrar of Companies.

67 A guarantee company has the liability of its members limited by its memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

68 There are at present 44 guarantee companies which are registered as private companies under the CO, of which 39 are without a share capital. They are regarded as private because their articles contain provisions which restrict their rights to transfer shares (which are however non-existent). The remaining five have a share capital. This type of company was prohibited when section 4(2) of the Companies (Amendment) Ordinance 2003 came into effect on 13 February 2004. The five guarantee companies having a share capital existing at that time are being grand-fathered.

7.11 The SCCLR has proposed that guarantee companies should form a distinct category of companies of their own. The SCCLR considers that guarantee companies should generally be subject to a regulatory regime similar to public companies, such as the requirement to file annual accounts with the Registrar of Companies, as members of the public would expect those companies to show a higher degree of transparency. Nevertheless, guarantee companies do vary in size and it would be inappropriate to require those small ones to be subject to HKFRSs that are primarily used for reporting by large or public companies. The SCCLR therefore proposes that guarantee companies that are small in size should be allowed to take advantage of the simplified reporting and disclosure requirements applicable to private companies under section 141D if they are able to meet certain specified qualifying criteria[69].

Question 20 : Do you agree that guarantee companies should be allowed to take advantage of the simplified reporting and disclosure requirements similar to those proposed to be applied to section 141D private companies (including simplified accounts and simplified directors' reports) if they are able to meet certain qualifying criteria?

<u>IF YES</u>,

(i) do you agree that the size criteria set out in paragraphs 7.3 and 7.6(e), i.e. (aggregate) total annual revenue, (aggregate) total assets and number of employees, are the right criteria for guarantee companies?

(ii) should the thresholds outlined in paragraphs 7.3 and 7.6(e) be applied to guarantee companies or should they be modified?

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69 The SCCLR and Working Group have not yet made any recommendations regarding the qualifying criteria. Nevertheless, the Working Group considers it inappropriate for large guarantee companies that could not meet the size criteria to opt out of the full reporting requirements simply by means of members' agreement along the lines of what is proposed in paragraph 7.6(c) above. Separately, there may also be a need for the SME-FRS to be modified to suit the special circumstances of small guarantee companies. The Government will invite the HKICPA to review this if there is sufficient public support for the proposal.

(iii) should any additional information be required from those guarantee companies which take advantage of the simplified reporting and disclosure requirements?

CHAPTER 8

TENTH, ELEVENTH SCHEDULES AND STANDARD-SETTING PROCESS

The Tenth Schedule

8.1 As noted in paragraph 2.9 above, the Tenth Schedule of the CO comprises a detailed list of disclosure requirements as to the contents of the balance sheet and profit and loss account. The Schedule was first added to the CO in 1974 before the then HKSA had started to promulgate accounting standards. While the Tenth Schedule has been amended over the years, it has not been able to keep pace with the very significant developments in financial reporting, which are reflected in the HKFRSs, and is now significantly out of date. In this respect, it is estimated that approximately 75% of the disclosure requirements in the HKFRSs are not found in the Tenth Schedule. Furthermore, the HKFRSs contain an extensive set of recognition and measurement criteria as well as disclosure requirements whereas the Tenth Schedule contains only disclosure requirements.

Broad Options

8.2 The overlap between the Tenth Schedule and HKFRSs gives rise to possible conflicts. In this respect, there are three broad options to delineate their relative roles to address those concerns:

- ***Option (1)***: give statutory backing to accounting standards. This would involve incorporating all the accounting standards either into the Tenth Schedule or subsidiary legislation to the CO and timely updating to make them consistent with the IFRSs. Directors would be required by law to adhere to those standards. Such an approach has been adopted in some jurisdictions like Australia and Singapore[70].

- ***Option (2)***: maintain the status quo, i.e. to continue to split the rules into two streams, i.e. a set of statutory disclosure requirements in the Tenth Schedule and a set of non-statutory accounting standards.

[70] See sections 296(1) and 334 of the Australian Corporations Act 2001 and sections 201(1A), (3) and (3A) of the Singaporean Companies Act and Singaporean Companies (Accounting Standards) Regulations.

- ***Option (3)***: retain a few disclosure requirements in the Tenth Schedule which are not presently covered by the HKFRSs but with a significant public interest or corporate governance dimension (e.g. auditors' remuneration) and repeal the rest of the Schedule. Companies are required to continue to follow the overriding principle that their accounts must give a true and fair view of their state of affairs.

Considerations

8.3 A fundamental question is whether accounting standards should be given statutory backing and become legally enforceable. On the one hand, legally-backed accounting standards can facilitate enforcement by the regulators and provide clear and more certain avenues of private enforcement by members of companies. On the other hand, there are strong arguments against doing so, which may be summarized as follows:

(a) as accounting standards are constantly evolving, particularly with the full convergence of the HKFRSs with the IFRSs, it would be very difficult to keep them up-to-date if they are written into the law. This would affect Hong Kong's ability to ensure that its financial reporting standards are commensurate with those expected in a major international business and financial centre with consequential adverse impact on the international perceptions of Hong Kong's corporate governance and regulatory standards;

(b) the HKFRSs contain both measurement criteria as well as disclosure obligations and it would be inappropriate to enshrine measurement criteria in statute law; and

(c) once the standards are given legal backing, they may become too prescriptive and restrict the flexibility of the accounting profession to exercise professional judgment. Furthermore, there would also be a risk that companies might seek ways round the precise letter of legal requirements while ignoring the spirit of the provisions[71].

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[71] See a summary of the arguments against making accounting standards legally enforceable in the UK's report of Dearing Committee entitled "The Making of Accounting Standards" (1988) (the Dearing Report) as cited in *Farrar's Company Law* (Fourth Edition, 1998) by J.H. Farrar and B.M. Hannigan (Butterwoths) pp.470-471.

8.4 It should be noted that the overriding statutory consideration in preparing accounts under the CO is that they should give a true and fair view of a company's financial state of affairs (section 123(1) of the CO). In determining whether or not a company's accounts give a "true and fair view", the statutory requirements in the Tenth Schedule are an important consideration. However, they are not an absolute consideration as the directors of a company may depart from these requirements and/or give additional information in order to give a "true and fair view" in the company's accounts (section 123(4) of the CO). Consequently, a failure to follow the disclosure requirements in the Tenth Schedule might lead to a breach of the "true and fair view" requirement. However, that is not an absolute standard as the accounts could still be shown to have given a "true and fair view". Furthermore, even if the accounts comply with the disclosure requirements in the Tenth Schedule, this does not necessarily mean that they give a "true and fair view". In this respect, while failure to give a "true and fair view" is a criminal offence (section 123(6) of the CO), failure to follow one, several or even all the requirements of the Tenth Schedule does not necessarily attract any penalty.

Working Group's Recommendation

8.5 Having considered the pros and cons of the three options, the Working Group recommends Option (3) as the preferred option. Option (1) is not preferred in view of the drawbacks in paragraphs 8.3(a) to (c) above. Option (2) is also unsatisfactory as it would require frequent updating of the Tenth Schedule to ensure that the disclosure requirements in the Schedule harmonise with those in the HKFRSs. Option (3) would avoid any potential conflicts between the Tenth Schedule and the HKFRSs. To implement Option (3), the Working Group suggests the retention of a small number of public interest disclosure requirements not covered by the HKFRSs in a revised version of the Tenth Schedule. Such disclosures include auditors' remuneration[72], the aggregate amount of any outstanding loans to directors and employees to acquire shares in the employing company made under the authority of sections 47C(4)(b) and (c) of the CO and information regarding a company's ultimate parent undertaking as is currently required under section 129A of the CO.

72 The Working Group proposes that the auditors' remuneration be split into audit and non-audit services.

8.6 Instead of giving statutory backing to the accounting standards, the Working Group recommends giving some form of statutory recognition to HKFRSs by requiring companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards[73] and particulars of any material departure from those standards and the reasons for it should be given[74]. The purposes of such a requirement are as follows:

- to indicate to the preparers of accounts that compliance with accounting standards is necessary;
- to bring to the attention of the whole board of directors any proposed material departure from accounting standards[75];
- to help the user to understand the accounts[76];
- to facilitate the task of monitoring compliance with accounting standards[77] and, where appropriate, taking remedial and/or enforcement action; and
- as the accounting standards have statutory recognition, it is likely that the court will treat compliance with accounting standards as prima facie evidence that the accounts are true and fair.

Question 21 : (a) Among the three options listed in paragraph 8.2, which option do you favour? What are the reasons for your choice?

(b) If Option (3) is chosen, do you also favour giving statutory recognition to the HKFRSs by requiring companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons?

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[73] In defining "applicable accounting standards", there should be a provision stating that the Chief Executive of the Hong Kong Special Administrative Region or some other designated official determines which body issues the applicable accounting standards. If the HKICPA is designated as the issuing body, the HKFRSs would be given recognition.

[74] This is similar to paragraph 36A of Schedule 4 to the UK Companies Act 1985. Schedule 4 will be replaced by new regulations to be made under the UK Companies Act 2006.

[75] The argument was advanced by the Dearing Committee. See paragraph 10.4 of *the Dearing Report*.

[76] Ibid.

[77] Ibid.

(c) If you do not favour any of the three options, do you have any other suggestion for dealing with possible conflicts between the Tenth Schedule and accounting standards?

The Eleventh Schedule

8.7 The Eleventh Schedule of the CO comprises a list of relatively simple disclosure requirements regarding the contents of the balance sheet of companies applying section 141D. As in the case of the Tenth Schedule, there is an overlap between the Eleventh Schedule and SME-FRS, which can give rise to possible conflicts. The Working Group considers that such conflicts should be dealt with in the same way as that proposed for the Tenth Schedule. This would involve repealing the Eleventh Schedule in its present form and retaining those disclosure requirements with a significant public interest or corporate governance dimension, which are not presently covered by the SME-FRS. As in the case of the HKFRS, the Working Group also suggests that the SME-FRS should be given statutory recognition[78].

Question 22 : (a) Do you agree that the Eleventh Schedule in its present form should be repealed while retaining those disclosure requirements concerning section 141D companies with a significant public interest or corporate governance dimension and which are not presently covered by the SME-FRS?

(b) <u>IF YES</u>, do you agree that statutory recognition should be given to the SME-FRS by requiring section 141D companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons?

[78] The Working Group proposes that there should be a new provision requiring annual accounts to state whether the accounts have been prepared in accordance with applicable accounting standards and to give particulars of any material departure from those standards and the reasons for such a departure. In defining "applicable accounting standards", there should be a provision stating that the Chief Executive of the Hong Kong Special Administrative Region or some other designated official determines which body issues the applicable accounting standards. If the HKICPA is designated as the issuing body, the SME-FRS would be given statutory recognition.

(c) **<u>IF NOT</u>, do you have any other suggestion for dealing with possible conflicts between the Eleventh Schedule and the SME-FRS?**

Standard-setting Process

8.8 Paragraph 26.13(a) of the SCCLR's Consultation Paper on Phase I of the CGR (July 2001) stated that:

"Hong Kong does not need independent standard setting bodies for accounting and auditing standards, given that they are very closely modeled on International Accounting Standards [*now being referred to as IFRSs*] and International Auditing Standards. The standard setting function should continue to be vested in the HKSA [*renamed HKICPA*] but the composition of the Financial Accounting Standards Committee [*now renamed the Financial Reporting Standards Committee (FRSC)*] and the Auditing Standards Committee [*now renamed the Auditing and Assurance Standards Committee (AASC)*] of the HKSA should be widened to cater for more involvement of the public.".

8.9 Subsequently, the composition of the FRSC and the AASC has been widened to cater for more public involvement in line with the SCCLR's proposal. The HKICPA's Standard-Setting Oversight Board, which is responsible for reviewing and advising on the HKICPA's overall strategy, policies and processes for setting accounting standards, also includes members nominated by relevant stakeholders, including government, industry bodies and academics.

8.10 As the HKFRSs are now fully converged with IFRSs, we do not see the need to change the status quo of standard setting by the HKICPA as enshrined under the PAO. In addition, the HKICPA will continue to heavily engage relevant market regulators, professional and trade bodies as well as other stakeholders in the international standard-development and local convergence process.

8.11 As regards the SMEs, the HKICPA is now reviewing the present modus operandi of the standard-setting regime for SME-FRS. In parallel, an exposure draft of the International Accounting Standards Board's International Financial Reporting Standard for SMEs was just released in February 2007. The standard is expected to be finalized in mid-2008. We will examine all these developments with a view to deciding the best way forward regarding the accounting standard-setting regime for SMEs.

8.12 As a related issue, section 141D(1)(e)(ii) requires the auditors' report of a company applying section 141D to state "whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs…". According to the SME-FRF (paragraph 16), compliance with the SME-FRF & SME-FRS is necessary in order for accounts to give a "true and correct view" when a Hong Kong incorporated company prepares its accounts in accordance with section 141D.

8.13 The Working Group considers that the phrase "true and correct view" may not be appropriate and should be amended[79]. As the issue is related to developments in international financial reporting standards for SMEs, the Government will revisit this issue in the light of the International Financial Reporting Standard for SMEs (see paragraph 8.11 above).

[79] The phrase "true and correct" may be inappropriate in certain circumstances. For example, as the amount of depreciation shown in the accounts is an estimate, the use of the word "correct" to describe the amount is inappropriate. It is the Working Group's intention that the "true and fair view" requirement should also apply to SMEs. However, under the current International Financial Reporting Standards, only those accounts prepared in accordance with the IFRS (or HKFRSs) can be considered as presenting a "true and fair view". Therefore, as an alternative, the Working Group has recommended that section 141D should be amended to require directors to prepare accounts or group accounts that are "properly prepared". The auditors should give an opinion in their report on whether the relevant accounts are "properly prepared". The Working Group has not proposed any definition for the term "properly prepared", which is intended to work on a similar basis to the "true and fair view" requirement. A set of rules and principles outside the law would be developed to define its meaning and, over time, these rules and principles would be backed or recognised by court decisions. The Government will consider whether "properly prepared" or another formulation should be used in the light of developments in the International Accounting Standards Board's financial reporting standards for SMEs.

CHAPTER 9

QUESTIONS FOR CONSULTATION

Question 1 : (a) Should the right of inspecting a company's accounting records be extended beyond directors to other officers of the company (such as managers and secretaries)?

(b) Do you agree that the court may, on application by a director, allow a person to inspect a company's accounting records on behalf of the director on such terms and conditions as the court may think fit?

Question 2 : (a) Do you agree that the CO should be amended to require each company to have a fixed accounting reference period?

<u>IF YES</u>, do you agree that:

<u>*For a newly incorporated company:*</u>

(i) it should be allowed to appoint a day as its accounting reference date through a directors' resolution, provided that the first accounting reference period should be (counting from its incorporation date) as mentioned in paragraph 3.8(a):

- not less than six months?
- not more than 18 months?

(ii) if there is no appointed date under (i) above, the accounting reference date should be the last day of the month of its incorporation anniversary as mentioned in paragraph 3.8(a)?

(iii) in either case, the subsequent successive accounting reference periods should be 12 months each?

<u>*For any other company:*</u>

(iv) the accounting reference date should be the anniversary of the end-date of the company's most recent accounts laid at its AGM?

(v) the first and subsequent successive accounting reference periods should be 12 months each?

(b) Do you agree that each company should be allowed to alter its accounting reference date through a directors' resolution?

<u>IF YES</u>, do you agree that:

(i) the accounting reference period should not be extended to more than 18 months?

(ii) such alteration should not occur within five years since the last extension of the accounting reference period, save for the purpose of aligning the accounting reference date with that of its holding company?

(iii) in the case of a public company, the resolution should be filed with the Registrar of Companies for public information?

(c) Do you agree that the CO should be amended to require each company to have a fixed financial year, i.e. the same as the accounting reference period, except that directors may alter the last day of the financial year by plus or minus seven days?

Question 3 : (a) Should a holding company be relieved from the obligation to prepare its own accounts, provided that it has prepared group accounts and has included its own balance sheet as a note to its group accounts?

(b) Do you agree that the conditions under which a subsidiary is not required to prepare group accounts should be refined as proposed in paragraph 3.13?

Question 4 : Should companies (unless otherwise exempted as proposed in paragraphs 4.6, 7.9 and 7.11) be required to prepare a more analytical and forward-looking business review along the lines of paragraph 4.3?

Question 5 : Do you have any suggestions on the information that should be included in the financial and non-financial key performance indicators, a generic term which is intended to refer to factors by reference to which a company's business can be measured effectively?

Question 6 : Do you have any other suggestions on matters that should be covered in the business review?

Question 7 : Should directors' reports (unless otherwise exempted) be required to include information on:

(a) any significant difference in valuation between the market value of the company's non-current operating assets shown on the balance sheet as consist of interests in land and buildings and its book value to the extent practicable and, if so, what should be the appropriate information sources?

(b) equity linked agreements which subsist at the end of the financial year or which the company has entered into in the financial year, if the issue of shares under such agreements has a potential to dilute existing shareholders' interests?

Question 8 : Should directors' reports contain a statement to the effect that, so far as each director knows, there is no relevant audit information of which the auditors are unaware, and that each director has taken all the steps he should have taken to make himself aware of such information and to establish that the auditors are aware of it?

Question 9 : Do you agree that a separate directors' remuneration report should be prepared by:

(a) listed companies incorporated in Hong Kong; and

(b) unlisted companies incorporated in Hong Kong where holders of not less than 5% of the issued share capital or, in the case of a company not having a share capital, members representing not less than 5% of the total voting rights of all the members so request?

IF YES, do you agree that the remuneration report should disclose full details of various types of benefits given to the individual directors by name, including basic salary, fees, housing and other allowances, benefits in kind, pension contributions, bonuses, compensation for loss of office and long-term incentive schemes including share options?

Question 10 : We aim to revise the provisions regarding summary financial reports to make them more user-friendly from the company's as well as the members' viewpoints. Would you support amending the provisions along the lines as suggested in paragraph 5.4? Do you have any specific suggestions as to the form or contents of the summary financial reports?

Question 11 : Should auditors be given qualified privileges for statements made in the course of their duties as auditors and in respect of their resignation as auditors under the CO?

IF YES, do you agree that the proposed privileges should be extended to persons who publish any document prepared by the auditors in the course of their duties as auditors and in respect of their resignation under the CO?

Question 12 : Should the auditors' rights to information be enhanced so that they can require "specified persons", as mentioned in footnote 51, to provide them with information, explanations or other assistance as they think necessary for the performance of their duties as auditors?

Question 13 : Where a holding company has a subsidiary undertaking which is not a body corporate incorporated in Hong Kong, should the auditor have the right to require the holding company to obtain from the relevant persons or parties such information, explanations or other assistance as the auditor may reasonably require for the purposes of his duties as auditor?

Question 14 : Should an outgoing auditor be allowed to give the incoming auditor information that he became aware of in his capacity as auditor without seeking permission of the company?

Question 15 : Should all outgoing auditors (i.e. auditors who cease to hold office for any reasons) be required to provide a statement of any circumstances connected with his ceasing to hold office that he considers should be brought to the attention of the members or creditors of the company or a statement of no such circumstances?

Question 16 : Do you agree with the proposed amendments to the auditing provisions as set out in paragraph 6.9?

Question 17 : (a) Do you agree that the qualifying criteria for exemptions from certain accounting provisions for private companies under section 141D should be relaxed along the lines as suggested in paragraph 7.6?

(b) Specifically, do you agree that the size criteria set out in paragraphs 7.3 and 7.6(e), i.e. (aggregate) total annual revenue, (aggregate) total assets and number of employees are the right criteria? <u>IF YES</u>, do you agree with the proposed thresholds?

Question 18 : Should section 141D be amended to require a private company applying the section to prepare a full set of accounts dealing with the state of affairs and profit or loss of the company as required under the SME-FRS and, in the case of a holding company, also to prepare a full set of group accounts?

Question 19 : Should "section 141D companies" be required to produce only simplified directors' reports along the lines of paragraph 7.9?

Question 20 : Do you agree that guarantee companies should be allowed to take advantage of the simplified reporting and disclosure requirements similar to those proposed to be applied to section 141D private companies (including simplified accounts and simplified directors' reports) if they are able to meet certain qualifying criteria?

<u>IF YES</u>,

(i) do you agree that the size criteria set out in paragraphs 7.3 and 7.6(e), i.e. (aggregate) total annual revenue, (aggregate) total assets and number of employees, are the right criteria for guarantee companies?

(ii) should the thresholds outlined in paragraphs 7.3 and 7.6(e) be applied to guarantee companies or should they be modified?

(iii) should any additional information be required from those guarantee companies which take advantage of the simplified reporting and disclosure requirements?

Question 21 : (a) Among the three options listed in paragraph 8.2, which option do you favour? What are the reasons for your choice?

(b) If Option (3) is chosen, do you also favour giving statutory recognition to the HKFRSs by requiring companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons?

(c) If you do not favour any of the three options, do you have any other suggestion for dealing with possible conflicts between the Tenth Schedule and accounting standards?

Question 22 : (a) Do you agree that the Eleventh Schedule in its present form should be repealed while retaining those disclosure requirements concerning section 141D companies with a significant public interest or corporate governance dimension and which are not presently covered by the SME-FRS?

(b) IF YES, do you agree that statutory recognition should be given to the SME-FRS by requiring section 141D companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons?

(c) IF NOT, do you have any other suggestion for dealing with possible conflicts between the Eleventh Schedule and the SME-FRS?

Appendix I

Summary of Recent Reviews of Company Law and Amendments to the Companies Ordinance

The SCCLR, established in 1984, meets regularly to consider amendments to the CO to ensure that it meets the evolving needs of the business community. In recent years, it has completed the Overall Review of the Companies Ordinance (ORCO) in 2000 and the CGR in 2003.

2. The ORCO resulted in 62 recommendations for reform, including a mix of amendments to specific sections of the CO, topics which require further research and study, and major structural proposals such as re-writing and restructuring the CO.

3. The Companies (Amendment) Ordinance 2003 which came into force in February 2004 implemented most of the proposals regarding amendments to specific sections of the CO including, among others:

(a) allowing the formation of one member companies and one director companies;

(b) permitting the removal of directors by ordinary resolution notwithstanding any provision in the company's constitution;

(c) reducing the threshold for shareholders' proposals from 5% of voting rights or 100 shareholders to 2.5% or 50 shareholders; and

(d) removing the requirement for the court's approval of the reduction of capital arising from the redesignation of par-value to a lower amount, provided that the company has only one class of shares; the issued shares are fully paid-up; the reduction is distributed equally to all shares; and the reduction is credited to the share premium account.

4. In addition, further research and study have subsequently been undertaken in the context of either the CGR or separate reviews on other topics by the SCCLR. The aim of the CGR, which started in 2000, was to identify and bridge any gaps in Hong Kong's corporate governance regime, making it a benchmark in the region. Major recommendations arising from the CGR to enhance shareholders' remedies, including the introduction of a statutory derivative action and enhancement of shareholders' access to company records,

were implemented in July 2005 by means of the Companies (Amendment) Ordinance 2004[1].

5. The remaining recommendations of the ORCO and CGR, which require legislative amendments, are now being taken forward in the context of the rewrite of the CO.

[1] The Companies (Amendment) Ordinance 2004 also contains some other proposals which aim to improve the prospectus regime to facilitate market development, and modernise the registration regime for oversea companies.

Appendix II

Terms of Reference of the Working Group

Having regard to:

(a) the law in other comparable jurisdictions;

(b) the recommendations of the SCCLR in its Report on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance; and

(c) the accepted recommendations resulting from the SCCLR's CGR

to comprehensively review the accounting, auditing and financial statement disclosure provisions in the CO with the object of developing for submission to the FSTB, a composite set of proposals to amend the CO such that the clarity and utility of those provisions, which relate to the preparation and use of company financial statements and the overall disclosure requirements of the Ordinance, are enhanced.

Appendix III

List of Former and Current Members of the Working Group

Chairman	:	Mr. Roger T Best, JP	
Current Members	:		
Nominated by HKICPA	:	Mr. Mark C Fong	(from January 2005)
		Mr. Wilson Y W Fung	(from January 2003)
		Mr. Peter Griffiths	
		Ms. Elizabeth Law, MH	(from February 2003)
		Ms. Patricia McBride	(from February 2006)
		Ms. Sheila H Pattle	(from January 2005)
		Mr. John Bernard Wilkinson	
		Mr. Paul F Winkelmann	
Ex-Officio Members:		Mr. Gordon W E Jones, JP (The Registrar of Companies)	
		Mr. Charles R Grieve (Director, Corporate Finance Division of the Securities and Futures Commission)	
		Mr. Arthur Au (Principal Assistant Secretary for Financial Services and the Treasury)	(from November 2006)
		Mr. John C K Wong (Chief Treasury Accountant of the Official Receiver's Office)	(from May 2005)
Secretary	:	Miss Anita W S Tong (Senior Solicitor of the Companies Registry)	

Past Members :

Nominated by HKICPA :	Mr. Stephen S L Chan	(from January 2005 to January 2006)
	Ms. Winnie C W Cheung	(up to December 2003)
	Mr. Albert K K Li	(up to January 2005)
	Mr. Simon Riley	(from February 2004 to December 2004)
	Mr. Tai Hay-yuen	(up to January 2003)
Ex-Officio Members:	Mr. Esmond C S Lee (Principal Assistant Secretary for Financial Services and the Treasury)	(up to June 2003)
	Ms. Shirley Lam (Principal Assistant Secretary for Financial Services and the Treasury)	(from September 2003 to August 2004)
	Mr. Alan Y K Lo (Principal Assistant Secretary for Financial Services and the Treasury)	(from September 2004 to March 2006)
	Ms. Selene S L Tsoi (Principal Assistant Secretary for Financial Services and the Treasury)	(from June 2006 to November 2006)
	Mr. Aaron C W Cheng (Chief Treasury Accountant of the Official Receiver's Office)	(up to January 2003 and from December 2004 to May 2005)
	Mr. D F Manning (Assistant Official Receiver)	(from February 2003 to November 2004