

7 November 2012

Mr Darryl Chan
Deputy Secretary for Financial Services and the Treasury
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Darryl,

Phase One Consultation Paper
on Subsidiary Legislation for Implementation of the New Companies Ordinance

We are grateful for the opportunity to respond to the above Consultation Paper, and set out our comments below.

1. Annex 1 - Companies (Summary Financial Reports) Regulation

As regards the Notification and Notice of Intent, etc (Part 3) of Annex 1, as set out in paragraph 7(6)(c) if a member does not give the company a notice of intent in response to the notification before the specified date, the member is to be regarded as having requested the summary financial report to be sent by the company in hard copy form. This logic is not in line with the Listing Rules requirements and the new Companies Ordinance (S833) which provide that if no response was received within 28 days, the shareholder is regarded as having agreed that the document may be sent by making it available on a website. Please note that the wording under paragraph 7(6)(c) is the same as the new Companies Ordinance S442.

To avoid ambiguity, it may be better to provide that if there is no response, the summary financial report shall be sent in hard copy form, or such other form as the member has selected or deemed selected previously.

2. Annex 2 – Companies (Directors’ Report) Regulation

“Considering that it is not uncommon nowadays for companies to issue investment products which are not shares but will end up with the issue of shares,” FSTB proposes to expand the scope of disclosure to cover equity-linked agreements entered into by a company. A definition of “equity-linked agreement” is set out in the Regulation. It means an agreement that will or may

result in the company issuing shares. It includes an option to subscribe for shares; an agreement for the issue of securities that are convertible into shares; an employee share scheme and share option scheme. However, it excludes agreements to subscribe for shares pursuant to a public offering or an offer made to the members of the company in proportion to their shareholdings.

We understand that one of the purposes of disclosing equity-linked agreements is to let the shareholder or potential shareholder understand the potential share dilution implications of such transactions. If that is the case, the exclusion of agreements for public offerings and pro rata subscriptions would seem to defeat the purpose. It may be worth re-considering whether this exclusion is necessary.

3. Annex 3 – List Words and Expressions for the Proposed Companies (Specification of Names) Order

No comments.

4. Annex 4 – Companies (Non-Hong Kong Companies) Regulation

No comments.

5. Annex 5 – Company Records (Inspection and Provision of Copies) Regulation

- a) As set out in the Regulation, any request must be initiated by a written notice of inspection given to the company. But it is not clear how this notice will be communicated to the Company. Does it need to be signed and physically sent to the registered office? Can it be done by electronic means?
- b) The lead time for giving the notice of inspection is normally at least “7 days”. During the notice period for a general meeting, the lead time is shortened to at least “2 working days”.

According to section 654 of the Companies Ordinance, “company records” mean any register, index, agreement, memorandum, minutes or other document required by the new Companies Ordinance to be kept but does not include accounting records.

In view of the fact that there may be several consecutive holidays during Lunar New Year, Easter and Ching Ming Festival, a period of 7 days is not sufficient.

We would suggest that all days be changed to business days in this Regulation. We note from the explanatory note that the intention is business days instead of calendar days, so this may merely be a drafting issue.

The current draft only allows a shorter than 7-day period of notice (if the company agrees) but does not allow any longer period even with agreement. We believe it would be useful to provide for flexibility to extend the period, with consensus.

- c) The company must allow at least two hours for the requestor to inspect the company records. According to paragraph 5(4), the starting time shall be any time at or after 9:00 a.m. and at or before 5:00 p.m. That means the latest time for completion of inspection shall be 7:00 p.m. This might be a bit late. We suggest that the latest starting time should be 4:00 p.m. instead of 5:00 p.m. so that the latest completion time is 6:00 p.m.

6. Annex 6

The quorum for general meetings in the Model Articles is not clear. We suggest that this be clarified by setting the quorum at two members, in accordance with S585 of the Ordinance.

We hope the above comments are helpful.

Yours sincerely,

Shirley Yuen
CEO

c.c Public Consultation on Subsidiary Legislation for Implementation of the new
Companies Ordinance