

11th December, 2012

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

Dear Mr Ho,

Phase Two Consultation Document
on Subsidiary Legislation for Implementation of the new Companies Ordinance

The Hong Kong General Chamber of Commerce welcomes this opportunity to present its views to the Financial Services and the Treasury Bureau (“FSTB”) and the Companies Registry on the Phase Two Consultation Document on Subsidiary Legislation for Implementation of the new Companies Ordinance. We set out below our comments on the draft subsidiary legislation.

1) Chapter 8 – Companies (Trading Disclosures) Regulation (the “C(TD)R”)

In general, we support the proposals regarding the use and disclosure of a company’s registered name in all “communication documents” and “transaction instruments”. However, we have two specific comments on the proposals under the C(TD)R.

First, with regard to section 3(2) of the C(TD)R, we believe it is overly-prescriptive to provide that a company’s registered name that is displayed through an electronic device must be on display for at least 20 continuous seconds in every 4 minutes. If the company shares rented office space with a number of other companies, it may not be possible for them to control the frequency with which their name will be displayed.

Secondly, we are concerned by section 7 of the C(TD)R and the extension of the offences to include “responsible persons” – i.e. officers (directors, the secretary and managers) and shadow directors – and indeed under section 7(2) anyone else who contravenes the relevant provisions. Under the existing Companies Ordinance (the “Existing CO”), the offences under section 93 are only applied to the company itself and to an officer him/herself who commits the offence, not to every responsible person. We are in favour of retaining the existing liability regime.

2) Chapter 9 – Companies (Revision of Financial Statements and Reports) Regulation (the “C(RFS&R)R”)

We note that the proposed C(RFS&R)R is largely based on the existing Companies (Revision of Accounts and Reports) Regulation (Cap.32, sub. Leg. N) (“Cap.32N”) with necessary modifications to align with the applicable provisions on accounts and audit in the new Companies Ordinance (the “New CO”). At the outset, we would like to state that we agree with the general principle outlined in

paragraph 9.6 of the Consultation Document that the obligations and arrangements concerning the original reporting documents as provided in the New CO should apply equally to reporting documents that are being revised.

The proposal to retain the ways in which financial statements and reports may be revised – either by wholesale replacement or by supplementary notes – is sensible. In addition, we support the standardisation of definitions and alignment of requirements.

Overall, we appreciate that the FSTB has taken this opportunity to simplify and improve the presentation of the equivalent provisions under Cap.32N. The provisions are now presented in the C(RFS&R)R in a clearer and more succinct way than Cap.32N.

Finally, we note from paragraph 9.9 of the Consultation Document that the FSTB is reviewing section 408 of the New CO (Offences relating to contents of auditor's report) to address industry concerns and to bridge potential implementation gaps. We agree that section 408(2) in particular is ambiguous and potentially extremely broad in its application. We therefore welcome the decision to review and improve the drafting.

3) *Chapter 10 – Companies (Disclosure of Information about Benefits of Directors) Regulation (the “C(DIBD)R”)*

We note that the proposed C(DIBD)R is largely based on the disclosure requirements set out in the Existing CO with necessary modifications to align with changes under the New CO. We support the commitment to facilitating compliance and improving corporate transparency by defining key terms. We welcome and agree with the changes in relation to emoluments, retirement benefits, payment for termination of services, and payment to third parties for making a director's services available. These will promote consistency across financial statements and improve accountability by assisting shareholders to make comparisons between the remuneration packages of listed companies.

We agree with the proposal to remove the requirement for disclosure of information about “specified dealings” in favour of officers (as opposed to directors). Company officers, for example the company secretary, will require the cooperation of management if they propose to enter into “specified dealings” and we believe that this constraint provides sufficient protection to shareholders and other stakeholders. The proposed refinement of the detailed disclosure requirements in this area is also welcomed.

We support the proposal to modify the requirement in the Existing CO so that authorised financial institutions (“AFIs”) disclose the particulars of their “specified dealings” with directors in a register identical to that which is used by all other companies. We believe that this will promote transparency and better shareholder oversight. We also agree that AFIs should continue to enjoy simplified disclosure requirements in their financial statements in relation to “specified dealings” because of the nature of their businesses.

Finally, we have reviewed the proposed changes in relation to transactions, arrangements and contracts between the company and a director (direct or indirect). We believe that this is a sensible measure and brings director disclosure requirements into line with other key jurisdictions.

4) *Chapter 11 – Companies (Residential Addresses and Identification Numbers) Regulation (the “C(RAIN)R”)*

We note that the purpose of the C(RAIN)R is to improve the protection of privacy of personal information in documents for registration. We welcome and support this change. However, it is not clear from the C(RAIN)R precisely what information needs to be included in an application made for the purposes of sections 49(3), 51(3) or 58(3) of the New CO. In addition, it is not clear from the C(RAIN)R itself if any fee will be payable for making this application (although we note that paragraph 11.11 of the Consultation Document indicates that a fee will be prescribed).

5) Chapter 12 – Companies (Unfair Prejudice Proceedings) Rules

We have reviewed the proposed rules against the existing High Court Rules and Practice Directions and did not notice any gap. In addition, we have had regard to the corresponding rules under English law and did not notice any substantive differences. The draft rules appear fine to us, therefore.

We hope you will find our comments helpful.

Yours sincerely

Shirley Yuen
CEO

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