



Hong Kong General Chamber of Commerce  
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Our Ref: SN/8

22 August 2016

Ms Ellen Chan  
Deputy Principal Solicitor (Company Law Reform)  
Companies Registry  
15<sup>th</sup> Floor, Queensway Government Offices  
66 Queensway  
Hong Kong

Dear Ms Chan

**Some Proposed Amendments to the Companies Ordinance (Cap. 622)**  
**and its subsidiary legislation**

I refer to your letter of 13 July 2016 inviting comments from the Chamber on certain proposed amendments to the New Companies Ordinance and have pleasure in setting out responses, details which are as under.

**Items 1-4, 6, 7, and 9**

These are mainly administrative-related proposals, which we support.

**Item 5 and 11**

Our reservations on the proposals are detailed as follows:-

- It is not a standard practice for the Companies Registry ("CR") to use email communication either with the company and / or its director / company secretary notwithstanding that some companies had already reported email addresses in their incorporation forms;
- If the reporting of email address becomes law, there will be additional compliance and filing requirements with the CR. Unless CR commits to communication through email and also specifies under what circumstances this method of communication will be used, there may be not much benefits from this new arrangement;

- In all specified forms there are columns for the presenters to insert address / phone number / fax number / email address. It is the practice of CR to communicate either by phone / fax / letter with the presenter if the details are inserted in the columns. Given the foregoing, would the CR use email to communicate with the presenter? Further, if the email address of the presenter was different from that of the company, how could the presenter follow up with the CR?
- Spam emails could become more prevalent.

#### **Item 8:**

As the scope of HKFRS 10 is too broad and often requires cross-referencing other HKFRS provisions, instead of replacing Schedule 1 entirely with HKFRS 10 we suggest amending certain provisions in Schedule 1 from the current phrasing of “rights that an entity that can enforce” to that of “control that it can exert over an entity”.

For example, the definition of “key management personnel” can be quite broad and, as such, would often be subject to determination by professionals for the respective companies. Currently in the UK and Australia, the scope is limited to “[its] board of directors”.

A comparison of provisions in Hong Kong with those in the United Kingdom and Australia are as follows: -

<b>UK – Companies Act 2006</b>	<p>s. 1162 Parent and subsidiary undertakings</p> <p><i>Consistent with Hong Kong’s provisions</i></p> <p>(2) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if -</p> <p>(a) it holds a majority of the voting rights in the undertaking, or</p> <p>(b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or</p> <p>(c) it has the right to exercise a dominant influence over the undertaking –</p> <p>(i) By virtue of provisions contained in the undertaking’s articles, or</p> <p>(ii) By virtue of a control contract,</p> <p>(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking</p> <p><i>Differ from Hong Kong’s provisions</i></p> <p>(4) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if –</p> <p>(a) it has the <b>power to exercise, or actually exercise,</b> dominant influence or <b>control over it,</b> or</p> <p>(b) it and the subsidiary undertaking are managed on a unified basis</p>
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<p><b>Australia – Corporation Act 2001</b></p>	<p>s. 46 What is a subsidiary</p> <p><i>Differ from Hong Kong's provisions</i></p> <p>A body corporate (the “first body”) is a subsidiary of another body corporate if, and only if:</p> <ul style="list-style-type: none"> <li>(a) the other body : <ul style="list-style-type: none"> <li>(i) <b>controls</b> the composition of the first body’s board; or</li> <li>(ii) is in a position to cast, or <b>control</b> the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or</li> <li>(iii) holds more than one-half of the issue share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or</li> </ul> </li> <li>(b) the first body is a subsidiary of a subsidiary of the other body</li> </ul> <p>s50AA Control</p> <ul style="list-style-type: none"> <li>(1) For the purpose of this Act, <b>an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.</b></li> <li>(2) In determining whether the first entity has this capacity: <ul style="list-style-type: none"> <li>(a) The practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and</li> <li>(b) Any practice or pattern of behavior affecting the second entity’s financial or operating policies is to be taken into account.</li> </ul> </li> <li>(3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.</li> <li>(4) <b>If the first entity:</b> <ul style="list-style-type: none"> <li>(a) <b>has the capacity to influence decisions about the second entity’s financial and operating policies; and</b></li> <li>(b) <b>is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity’s members;</b> the first entity <b>is taken not to control</b> the second entity</li> </ul> </li> </ul>
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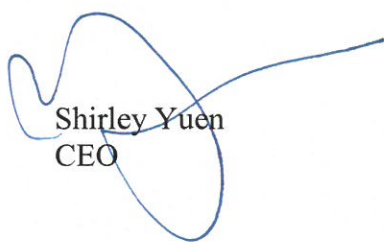


**Item 10**

We support the proposal to expand reporting exemption for groups with subsidiaries incorporated outside of Hong Kong if these companies meet the prescribed size criteria.

I hope you will find our comments to be useful in your deliberations.

Yours sincerely



Shirley Yuen  
CEO