

Date: 12 December 2011

Companies Bill Team
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Attn: Nick Au Yeung

Fax: 2869 4195

Dear Nick

Re: Consultation Paper on the Qualification Criteria for Private Companies to prepare Simplified Financial and Directors' Reports

I refer to your letter dated 6 December 2011 enclosing a printed copy of the above consultation paper (the "**Consultation Paper**") and would like to set out my views below for your consideration. Defined terms used herein shall have the same meanings as defined in the Consultation Paper unless otherwise defined.

Whilst I appreciated that some members of the Bills Committee might concern that the revenue and asset criteria proposed in Part 9 of the CB were too restrictive. They suggested that the relevant criteria for automatic qualification for simplified reporting should be increased and even further suggested that private companies not meeting the size criteria should also be allowed to adopt simplified reporting so long as majority of members of such companies so agree.

However, I am of the view that Option 1 should be adopted notwithstanding the fact that members of the Bills Committee might have the concerns set out in the preceding paragraph.

Option 1

I share the same concerns with HKICPA regarding the proposal to extend the use of SME-FRS to all private companies regardless of their size. I agree that SME-FRS was developed essentially for SMEs as an alternative to the full HKFRSs and generally has much simpler accounting requirements. This SME-FRS was not designed to cater for financial reporting of sizeable private companies with much more complex accounts.

With effect from the implementation of HKFRS for PEs in February 2011, sizeable private companies may adopt this revised HKFRS for PEs for preparation of their financial statements which are simpler and less onerous than that required under the full HKFRSs.

I also note from paragraph 13 of the Consultation Paper that comparable jurisdictions like the UK and Singapore, do provide for different accounting and reporting requirements for large and small private companies. In these countries, there is no

mechanism for sizeable private companies to opt for financial reporting requirements that are applicable to smaller private companies. In order to bring our local standards and requirements in line with international ones, I did not see any reasons for not adopting Option 1.

Option 2

I did not agree with the view set out in paragraph 14 of the Consultation Paper that a private company would prepare financial statements in accordance with the full HKFRSs on voluntary basis as necessary (eg if they need to obtain external funds). One of the fundamental accounting principal is consistency of presentation of financial statements (HKAS 1 (Revised) Presentation of Financial Statements). I believe a sizeable private company must not be allowed to pick any HKFRS which it considers appropriate for meeting/facilitating its commercial needs (eg fund raising or borrowing activities). A sizeable private company must use the same set of HKFRSs consistently throughout its financial reporting periods regardless of whether it needs external funds or otherwise.

In addition, the fact that a private company with members' approval, irrespective of its size, is already allowed to prepare simplified financial statements under existing section 141D of the CO should not support the argument for Option 2. As set out in my reasons under the paragraph headed Option 1 above, we need to bring our local regime in line with the international standards and requirements. Now it is the golden opportunity for us to take out the shareholders' approval provision from the current regime even though the current regime does not seem to create any problems.

Hence, I do not accept the view that if the majority of members agree and no member objects, it is not necessary to force a private company to adopt the full HKFRSs even if it is a sizeable one.

Option 3

This option seems to be a combination of Option 1 and Option 2 whereby the regime would require two thresholds: (i) a standard threshold for smaller private companies to automatically adopt simplified reporting; and (ii) a higher threshold for sizeable private companies to opt for simplified reporting if approval from majority of members is obtained.

For reasons similar to those set out in the paragraph headed Option 2 above, I do not accept the view that a sizeable private company could opt for simplified financial reporting if approval from majority of members is obtained even though the threshold is higher than the standard threshold for automatic qualification.

In addition, it is very difficult to determine the level of this higher threshold. I note from paragraph 19 of the Consultation Paper which suggest that a minimum of HK\$500 million may be a reference point when determining this higher threshold. However, I disagree with this. I appreciate that the proposal of HK\$500 million in paragraph 19 of the Consultation Paper is based on Rule 8.05(2) and Rule 8.05(3) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Listing Rules**"). One must bear in mind that the criteria set out in Rule

8.05 of the Listing Rules are based on experience and practice of the Hong Kong IPO market and were results of long time consultation from the market. Rule 8.05 of the Listing Rules concerns about the qualification for listing which has nothing to do with and/or bears no correlation with the regime for simplified financial reporting for private companies. I believe that any attempt to set this higher threshold would be arbitrary where I could not find any solid ground to base upon.

Since I have not yet reviewed HKICPA's proposal for raising the size criteria for its SME-FRF, I would not be able to comment on the their proposed threshold of HK\$100 million, HK\$100 million, and 100 for revenue, total assets and number of employees, respectively.

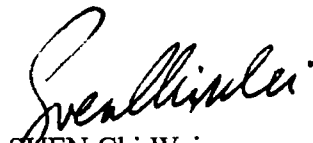
Conclusion

To conclude, I believe there should not be any change to the proposal in the CB.

I hope my comments above would be helpful to you. Should you have any questions, please feel free to call me at 9302 6084 or my address at Flat F, 32/F, Block 2, Discovery Park, Tsuen Wan, New Territories.

I have no objection for my name and comments to be posted on the FSTB's website, the Companies Registry's website or referred to in any other documents you publish in connection with the consultation.

Yours faithfully



SUEN Chi Wai
Solicitor of HKSAR
HKICPA/FCCA