

The Stock Exchange of Hong Kong Limited
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Our Ref: MD20120112-001

12 January 2012

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

Attention: Mr Arsene Yiu

Dear Mr Yiu,

Companies Bill – Consultation on the Qualifying Criteria for Private Companies to Prepare Simplified Financial and Directors’ Reports (the “Consultation”)

We refer to your letter of 6 December 2011. You asked our views on the qualifying criteria for private companies and holding companies of groups of private companies to prepare simplified financial and directors’ reports.

Background

Under the current Companies Ordinance (“CO”), a private company may, with the agreement of all its shareholder, prepare simplified accounts and directors’ reports (“simplified reports”). The Companies Bill (“CB”) under the Consultation Conclusions for the Second Phase Consultation proposed that a “small private company” and the holding company of a “group of small private companies” will be automatically qualified to prepare simplified reports. Large private companies/groups will not be allowed to use simplified reports.

The Consultation further sets out options and seeks views on which option to adopt: (1) large private companies/groups will not be allowed to use simplified reports (same as CB); (2) large private companies/groups may use simplified reports with 75% shareholders’ approval; or (3) large private companies/groups with size below a higher threshold may use simplified reports with 75% shareholders’ approval. Views are also sought on the higher threshold.

Our comments

Rule 8.03 of the Main Board Listing Rules states that “an issuer which is a Hong Kong company must not be a private company within the meaning of section 29 of the Companies Ordinance”. “Private company” is defined in section 29 of the CO as a company with articles that restricts the right to transfer its shares, limits the number of members to 50 and prohibits any invitation to the public to subscribe.

We note that the reporting exemption will only apply to a small private company (Clause 358(1) of the CB) and a private holding company that holds a group of small private companies (Clause 358(2) of the CB). So the proposed reporting exemption will not apply to companies that apply for listings (“listing applicants”) or listed companies.

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For a listing applicant, the accounts (or the consolidated accounts of a listing applicant group) must comply with the Listing Rules¹, which provides that the listing applicant company's/group's accounts must conform with HKFRS, IFRS or China Accounting Standards for Business Enterprises (for a PRC issuer if it applies).

For a listed company, in particular a listed company with small private subsidiaries, our concern would be whether the group accounts would reflect the true and fair view of the group's financial position if its subsidiaries were to adopt simplified reports. The Listing Rules requires the financial statements in an annual report to give "a true and fair view of the state of affairs of the listed company and of the results of its operations and its cashflows...". It also states that the annual accounts of a listed company must conform with HKFRS, IFRS or China Accounting Standards for Business Enterprises (for a PRC listed company if it applies).² Although a small private subsidiary may use simplified reports, we expect that in reality, a listed holding company's private subsidiaries would prepare accounts that enable the listed holding company to prepare and disclose its accounts under the Listing Rules.

Based on the above, we consider that the quality of information disclosed will not be adversely affected by the proposals. We do not have strong views on the proposed options. We also do not have strong views on the size criteria and manner of adoption for simplified reports as long as it was adopted according to relevant laws and standards.

Yours faithfully
For and on behalf of
The Stock Exchange of Hong Kong Limited



Mark Dickens JP
Head of Listing

¹ Main Board Listing Rule 4.11 of the Main Board Listing Rules and GEM Listing Rule 7.12.

² Appendix 16 to the Main Board Listing Rule and Chapter 18 of GEM Listing Rules.