

**Hong Kong Bar Association’s comments on  
Companies (Revision of Accounts and Reports) Regulations**

**1. Part 2, section 3(1)**

“(1) A provision of the Ordinance as to the matters to be included in the accounts of a company applies to revised accounts, as it applies to the original accounts, as if the revised accounts were approved by the board of directors of the company on the date of the original accounts.”

1.1 The words underlined seems to be unnecessary and their inclusion may confuse the meaning of section 3(1). A comparison between section 3(1) and section 3(2) shows that the underlined words are redundant and do not serve any useful purpose.

**2. Part 2, section 3(3)(b)(i) and section 3(4)(b)(i)**

“(3)...the directors shall cause to be made in a prominent position in the revised accounts –

- (a) ...
- (b) a statement that the revised accounts –
  - (i) are taken as having been approved by the board of directors on the date of the original accounts instead of the date of revision;”

“(4)...the directors shall cause to be made in a prominent position in the supplementary note –

- (a) ...
- (b) a statement that the revised accounts –
  - (i) are taken as having been approved by the board of directors on the date of the original accounts instead of the date of revision;”

2.1 It is not clear what is the purpose of enacting these two provisions. The present statutory scheme prescribes the manner and timetable in which the company has to prepare its accounts. It also puts an obligation on the board of directors to approve the accounts within the statutory time limit. This statutory scheme has an important function to play in proper corporate governance in that it requires the board of directors to consider and approve the accounts in a timely manner so that the shareholders can review and

monitor the performance of the company in good time.

- 2.2 It follows that if, after approving the accounts, the board of directors considers that the accounts needs to be revised, the proper course should be for the board to approve the revised accounts and that such approval should take effect from the date on which the revised accounts are approved. There is no reason why the date of the approval of the revised accounts should relate back to the date when the original accounts were approved.
- 2.3 On the other hand, there are obvious drawbacks in allowing the date of the approval of the revised accounts to relate back to the date on which the original accounts were approved. For instance, it may have the undesirable effect of allowing an irresponsible board to flout the statutory provisions governing preparation and approval of accounts by causing the original accounts to be approved within the statutory time limit even though the board knows that there are pertinent matters which require revisions. This is particularly so when there is no time limit within which the board of directors may cause the accounts to be revised and approved.
- 2.4 If it is considered necessary to include these relation back provisions, it is advisable to consider adding certain provisos to make it clear that the relation back do not have the effect of affecting any right or remedy which a shareholder may have or may take against the board of directors by reason of its failure to cause the accounts to be prepared in accordance with the provisions of the Ordinance.

### **3. Part 2, section 4(1)**

“(1) A provision of the Ordinance as to the matters to be included in the directors’ report applies to a revised directors’ report, as it applies to the original directors’ report, as if the revised directors’ report was approved by the board of directors of the company on the date of the original directors’ report.”

- 3.1 The underlined words seems to be unnecessary and their inclusion may confuse the meaning of section 4(1).

### **4. Part 2, section 4(2)(b)(i) and section 4(3)(b)(i)**

- 4.1 Same comments as section 3(3)(b)(i) and section 3(4)(b)(i) (see paragraph 2

above).

**5. Part 2, section 5(1), section 5(2)(b)(i) and section 5(3)(b)(i)**

5.1 Same comments as section 3(1), section 3(3)(b)(i) and section 3(4)(b)(i) (see paragraphs 1 and 2 above).

**6. Part 2, section 5(7)**

6.1 It is not clear what purpose this section intends to achieve. It seems that if the board of directors considers it necessary to issue a revised summary financial report to replace the original summary financial report, it must be in the interest of the shareholders and, indeed, any persons and entities having dealings with the listed company (such as banks, suppliers, creditors, etc) to be notified of the existence of the revised summary financial report.

**7. Part 2, section 9(1)**

“...the Ordinance has effect with respect to the revised accounts as if the revised accounts were, as from the date of revision, the accounts of the company in place of the original accounts.”

7.1 By this provision, it seems that the revised accounts only take effect from the date of the revision and not, the date on which the original accounts were approved which, by reason of the relation back provisions under section 3(3)(b)(i) and section 3(4)(b)(i), is treated as the date on which the revised accounts are approved. If this is the intention of the legislature, the concerns about the relation back provisions (described in paragraph 2 above) will not exist. It would be more desirable to remove the relation back provisions under section 3(3)(b)(i) and section 3(4)(b)(i) to avoid any confusion as to the date on which the revised accounts take effect.

**8. Part 2, section 9(2), section 9(4) and section 9(6)**

8.1 These provisions, by themselves, are fine. They however serve to highlight the undesirable effect of allowing the board of directors to revise the original accounts at any time and the concerns discussed in paragraph 2.3 above.

**9. Part 2, section 9(3)**

9.1 Same comments as section 9(1).

**10. Part 2, section 9(5)**

10.1 Same comments as section 9(1).

**11. Part 2, section 10(2) and section 11**

11.1 There is no reason why another person, other than the incumbent auditor, should be allowed to audit the revised accounts. There are two reasons for this. First, the auditor is an officer appointed by the shareholders at general meeting and is charged with the duty of reviewing the accounts and reporting his opinion on the accounts to the shareholders. It is therefore inappropriate for any person other than the incumbent auditor to audit the revised accounts. Secondly, in auditing the accounts of a company, an auditor often has to draw on his previous knowledge on the company (such as nature of business, accounting practices and representations by management, etc) before he can express an opinion on whether the accounts give a true and fair view on the state of the company's financial state. This is not a task which can properly be discharged by some ad hoc accountant or auditor.

Hong Kong Bar Association

12 March 2007