

SLAUGHTER AND MAY

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17 November 2005

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Attention: Mr Stephen Chan, Executive Director

Your reference 貴行檔案編號
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Our reference 本行檔案編號
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Dear Sirs

Companies (Amendment) Ordinance 2005 – Restatement of Prior Year Amounts

1. As a result of amendments to the Companies Ordinance made by the Companies Amendment Ordinance 2005, certain undertakings (known as subsidiary undertakings) will be required to be treated as subsidiaries in the statutory accounts of companies incorporated in Hong Kong for financial years commencing on and after 1st January, 2006. Because of the restricted definition of subsidiary in section 2 of the Companies Ordinance, subsidiary undertakings cannot be treated as subsidiaries in the statutory accounts of companies incorporated in Hong Kong for financial years commencing before 1st January, 2006.
2. Schedule 10 to the Companies Ordinance requires the statutory accounts of a company incorporated in Hong Kong to include specified information for and at the end of the financial year to which the accounts relate and corresponding information for and at the end of the immediately preceding financial year. You have asked us to advise whether such corresponding information for and at the end of a company's financial year immediately before that in respect of which it first complies with the requirement to treat subsidiary undertakings as subsidiaries should be restated so as to treat subsidiary undertakings as subsidiaries. In our opinion, it should be so restated. Our reasoning is as follows.
3. Part I of Schedule 10 to the Companies Ordinance specifies the information which must be included in or with the balance sheet and profit and loss account of a company incorporated in Hong Kong. Paragraph 12(16) of Schedule 10 requires (subject to exceptions which are not material for the purposes of this opinion) there to be included "the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet". Paragraph 17(5) requires (again subject to immaterial exceptions) there to be included "the corresponding amounts for the immediately preceding year for all items shown in the profit and loss account".
4. Part II of Schedule 10 contains special provisions as to the information which must be included in the accounts of a company incorporated in Hong Kong which is a holding or subsidiary company. Paragraph 18 of Schedule 10 requires the accounts of a holding company to include certain

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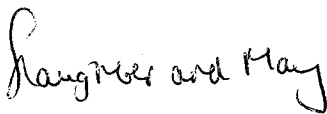
information about its subsidiaries. Paragraph 20 of Schedule 10 requires the consolidated balance sheet and profit and loss account of a holding company to combine the information contained in the separate balance sheets and profit and loss accounts of a holding company and its subsidiaries. The effect of the Companies (Amendment) Ordinance 2005 (section 3 read with section 19(1)) is that the references to subsidiaries in paragraphs 18 and 20 are to be read, when the paragraphs are applied to accounts for financial years commencing on and after 1st January, 2006, as including subsidiary undertakings.

5. Part II of Schedule 10 does not contain explicit requirements, comparable to those described in paragraph 3 of this letter, requiring prior year corresponding amounts to be included in the accounts of holding companies. However, we consider the requirements to be implicit. We think that, as paragraph 18 is merely adding extra items of information to be included in the accounts of a company which is a holding company, paragraphs 12(16) and 17(5) (the paragraphs requiring corresponding amounts to be included) apply automatically in respect of that extra information. We think that paragraph 20 is most logically read as requiring the consolidated balance sheet and profit and loss account to combine the information required by Part 1 of Schedule 10 to be included in or with the separate balance sheets and profit loss accounts. The information so required to be included by Part 1 includes corresponding amounts.
6. The question whether corresponding amounts included in accounts in compliance with Schedule 10 should be restated depends on the proper construction of the expressions "the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet" and "the corresponding amounts for the immediately preceding financial year for all times shown in the profit and loss account". This in turn depends on the proper construction of the word "corresponding". "corresponding" is not defined in the Companies Ordinance. There does not appear to have been extensive judicial discussion of the meaning of "corresponding". However, in *Sackville-West v. Holmesdale* (39 L.J. Ch. 520), it was stated that "to correspond" means "to harmonise with" or "to be suitable to". An ordinary dictionary definition of "correspond" is "to answer to in character or function; to be similar or analogous to" (OED, second edition 1989).
7. It seems to us that restated amounts for a prior year can, to adopt appropriate parts of the language in the case and dictionary definitions referred to in paragraph 6 above, more easily be said to harmonise with or to be similar or analogous to the items from the latest year to which they are being compared (in compliance with Schedule 10) than can unrestated amounts. Indeed a restated amount is, we would have thought, almost by definition likely to harmonise better with, and to be more similar or analogous to, the item with which it is being compared than an unrestated amount. It seems to us that in effect this is the judgement (and a sensible judgement) that the accounting profession has made in requiring restatements of prior year amounts when the items for the latest year with which they have been compared have been changed as a result of the adoption of changed accounting standards. The fact that, in the present case, the items with which the prior year amounts are to be compared will be changed as a result of a change in legislation rather than a change in accounting standards seems to us to be immaterial. There is nothing in the original or amended legislation (or the legislation effecting the amendments) which requires the prior year amounts to remain

unchanged. Indeed the amending legislation is silent on the point. This being so, there is nothing to prevent the ordinary and, in context, sensible meaning of "corresponding" to apply so as to require the relevant prior year amounts to be restated.

8. We should perhaps conclude by dealing with a possible objection to the above argument. In England, paragraphs 4(1) and 4(2) of Part 1 of Schedule 4 to the Companies Act 1985 expressly require corresponding amounts for prior years to be restated if they are not comparable. It might be argued that, as the English legislature found it necessary expressly to direct that non-comparable corresponding amounts should be restated, corresponding amounts should not be restated in Hong Kong without such express direction. We disagree. The English provisions are, we think, there simply to avoid a possible doubt. Without them, we think that arguments similar to those above in this opinion would in any event have led to a similar conclusion to that in this opinion, namely that non-comparable corresponding amounts should be restated.

Yours faithfully

A handwritten signature in cursive script that reads "Slaughter and May".