CPA Hong Kong Institute of Certified Public Accountants 香港會計師公會

TechWatch News at a glance

Issue 99 • January 2011

TechWatch updates you on technical developments in financial reporting, auditing, regulation and business. The Institute welcomes your comment, emailed to < commentletters@hkicpa.org.hk >. Click here for past issues.

Contents

Financial Reporting, Auditing and Ethics by:
Steve Ong (Editor), Selene Ho, Winnie Chan, Katherine Leung, Ben Lo

Specialist Practices, Business Members and Advocacy by:
Peter Tisman (Editor), Elena Chai, Mary Lam, Sharon Yeung

Financial Reporting, Auditing and Ethics

New!

1. Lunch Forum on Amendments to HKAS 12

The Institute will hold a lunch forum on 17 January 2011 on Amendments on HKAS 12 *Income Taxes* – Deferred Tax: Recovery of Underlying Assets which the Institute issued in December 2010. An entity shall apply these Amendments for annual periods beginning on or after 1 January 2012 where earlier application is permitted.

The existing HKAS 12 requires an entity to measure the deferred tax relating to an asset depending on whether the entity expects to recover the carrying amount of the asset through use or sale. It can be difficult and subjective to assess whether recovery will be through use or through sale when the asset is measured using the fair value model in HKAS 40 *Investment Property*. The Amendments provide a practical solution to the problem by introducing a presumption that recovery of the carrying amount will normally be through sale.

Accordingly, unless the presumption is rebutted, the measurement of the deferred tax liability or deferred tax asset shall reflect the tax consequences of recovering the carrying amount of the investment property entirely through sale. This presumption is rebutted if the investment property is depreciable and is held within a business model whose objective is to consume substantially all of the economic benefits embodied in the investment property over time, rather than through sale.

To secure seats, please register early by completing the **registration form**.

2. Technical Training and Support Programme 2011

A new **Technical Training and Support programme** for the first quarter 2011 has been developed to help members stay tune on HKFRS, HKFRS for Private Entities, Clarified HKSA and Revised Code of Ethics. It covers:

- New and revised Accounting Standards/ Guidance 2010/2011
- Risk Assessments and Auditors' Responses under New Clarified HKSAs
- Accounting for Financial Instruments
- Fraud and Going Concern Considerations with reference to HKSA 240 *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* and HKSA 570 *Going Concern*
- Accounting for Group Accounts
- The Revised Code of Ethics
- HKFRS for Private Entities Workshop
- Training for Audit Staff Workshop
- Audit Practice Manual Application Workshop

Click **here** for enrolment details and more information on the new programme.

3. Financial Reporting and Auditing Alert – Issue 12

The Institute issued **Financial Reporting and Auditing Alert – Issue 12** to summarize common issues noted from the reviews of published financial statements on presentation and reporting of statements of cash flows under HKAS 7 *Statement of Cash Flows.*

Members' Handbook

4. Handbook Updates No. 99 - No. 103

(i) **Update No. 99** relates to the withdrawal of Standards and Interpretations which have been superseded by the issuance of revised Standards and Interpretations.

(ii) **Update No. 100** contains Revised Statement 1.500 *Continuing Professional Development* which relates to the CPD requirements for Specialist Designation holders.

(iii) **Update No. 101** relates to the issuance of revised PN 820 *The Audit of Licensed Corporations and Associated Entities of Intermediaries*.

PN 820 has been revised with the following aspects:

- Part II has been revised to reflect the clarified Hong Kong Standards on Auditing ("HKSAs");
- Part IV has been revised to provide guidance in respect of cessation of activities by a licensed corporation;
- Example 1 of Appendix 1 has been revised to align with clarified HKSAs; and
- Appendix 2 has been revised to reflect updated guidance on client assets.

The revised PN is effective upon issue.

(iv) **Update No. 102** relates to the issuance of amendments to HKAS 12 *Income Taxes* – Deferred Tax: Recovery of Underlying Assets.

(v) **Update No. 103** relates to the issuance of amendments to HKFRS 1 *First-time Adoption of HKFRSs* – Severe Hyperinflation and Removal of Fixed Dates for First-time Adopters.

The first amendment replaces references to a fixed date of '1 January 2004' with 'the date of transition to HKFRSs', thus eliminating the need for companies adopting HKFRSs for the first time to restate derecognition transactions that occurred before the date of transition to HKFRSs. The second amendment provides guidance on how an entity should resume presenting financial statements in accordance with HKFRSs after a period when the entity was unable to comply with HKFRSs because its functional currency was subject to severe hyperinflation.

The amendments are effective from 1 July 2011. Earlier application is permitted.

Financial Reporting

5. Hong Kong Interpretation 5

HK Interpretation (HK Int) 5 *Presentation of Financial Statements – Classification by the Borrower of a Term Loan that Contains a Repayment on Demand Clause* states that the classification of a term loan as a current or non-current liability in accordance with paragraph 69(d) of HKAS 1 *Presentation of Financial Statements* shall be determined by reference to the rights and obligations of the lender and the borrower, as contractually agreed between the two parties and in force as of the reporting date.

In this regard, the Institute's Financial Reporting Standards Committee has developed a set of Questions and Answers covering a range of matters relating to HK Int 5, including:

- Reason of the issuance of HK Int 5
- Effective date and transitional arrangements
- Examples of repayment on demand clauses
- Comfort letters from lenders

Details are set out in **Questions & Answers** by the Institute.

6. Accounting Bulletin 4

Members are reminded that the Institute has issued **Accounting Bulletin 4 *Guidance on the determination of realised profits and losses in the context of distributions under the Hong Kong Companies Ordinance*** in May 2010 to provide guidance on the determination of distributable profits under the Hong Kong Companies Ordinance.

For ease of reference, a **Staff Summary** has been prepared to provide an overview of the guidance set out in Accounting Bulletin 4.

7. FRSC Minutes

This **FRSC minutes** on 2 November 2010 covers:

- ED of HK Int 5 *Presentation of Financial Statements – Classification by the Borrower of a Term Loan that Contains a Repayment on Demand Clause*
- IASB ED of Proposed Amendments to IAS 12 – *Deferred Tax: Recovery of Underlying Assets*
- IASB Consultation Documents
- IVSC Roundtable in Hong Kong on 12 November 2010
- Research on Control Notion for Revenue Recognition by the Accounting Standards Council of Singapore
- HKFRS 9 for Financial Liability Accounting

8. Invitation to Comment on IASB ED of *Hedge Accounting*

The Institute has issued an **Invitation to Comment** on IASB ED of *Hedge Accounting,* with comments requested by **16 February 2011**.

The ED proposes requirements that will enable companies to reflect their risk management activities better in their financial statements, and, in turn, help investors to understand the effect of those activities on future cash flows.

The proposed model is principle-based, and will more closely align hedge accounting with risk management activities undertaken by companies when hedging their financial and non-financial risk exposures. The proposals also include enhanced presentation and new disclosure requirements.

A summary prepared by the IASB on the ED is set out in the Appendix of the Invitation to Comment.

9. Institute Comments on Consultation Documents

(i) IFRS Foundation Consultation Document on *The annual improvements process: Proposals to amend the Due Process Handbook for the IASB*

The Institute made a **submission** to IFRS Foundation Consultation Document on *The annual improvements process: Proposals to amend the Due Process Handbook for the IASB* and the Institute generally supports the proposals and agrees that the enhanced criteria can assist the IASB and interested parties to assess the appropriateness of amendments to IFRSs for inclusion in annual improvements. The Institute supports the principle that is proposed in paragraph 65A(a) for Annual Improvements, i.e. an amendment should not introduce a new principle. It is believed that changes in principle should be addressed as separate projects to enable constituents to have sufficient time to respond to proposals and provide comments.

(ii) IASB ED of *Insurance Contracts*

The Institute made a **submission** to IASB ED of *Insurance Contracts* and generally supports IASB in the development of a comprehensive measurement approach for all types of insurance contracts issued by entities (and reinsurance contracts held by entities), with a modified approach for some short-duration contracts. The Institute also supports a measurement approach that is based on the principle that insurance contracts create a bundle of rights and obligations that work together to generate a package of cash flows and that such a measurement approach uses the following building blocks: (a) a current estimate of the future cash flows; (b) a discount rate that adjusts those cash flows for the time value of money; (c) an explicit risk adjustment; and (d) a residual margin.

The Institute also finds application guidance at a reasonably right level of detail. However, it is considered that additional guidance could be provided in areas such as incremental acquisition costs, the "maximum amount" included in the definition of risk adjustment, and “closely related” components of an insurance contract that would not require unbundling.

For contracts with discretionary participation features, it is believed that specific additional disclosures are necessary, given the high degree of discretion involved, the unique and varying features of these instruments, and the different regulatory frameworks that apply to them in each jurisdiction.

(iii) IFRS Interpretations Committee ED of *Stripping Costs in the Production Phase of a Surface Mine*

The Institute made a **submission** to IFRS Interpretations Committee ED of *Stripping Costs in the Production Phase of a Surface Mine.*

The Institute does not support the draft Interpretation and acknowledges that accounting for stripping costs is an area where diversification exists in practice among the mining companies. The Institute recognizes the IFRS Interpretations Committee’s objectives and efforts to provide additional guidance on this matter. However, the approach proposed in the draft Interpretation is rules-based and based on a simplistic view of mines and their associated processes.

It is considered that differences in accounting treatment for stripping costs is an inherent issue due to the complexity of mining activities, different geological formations and/or varied mining environments. This diversity in practice should not be considered as necessarily undermining reliable and relevant financial information provided by mining entities. Also, it is concerned that the rules-based requirement in the draft Interpretation to differentiate a “stripping campaign” from “routine waste clearing activities” presents practical challenges in many aspects. Moreover, this Interpretation appears to be based on an over simplistic view of ore distribution and a single-source surface mine, which rarely exist in reality. It is concerned that entities would be required to make significant judgements in applying the draft Interpretation.

The Institute believes that broad principles are available in the Framework and relevant IFRS (IAS 16 and IAS 38) to guide recognition, measurement, and disclosure of accounting for production stripping costs. Mining entities should be allowed to use their judgment and consider their particular circumstances to determine the most appropriate accounting policies and manner of depreciation or amortization.

(iv) IASB ED of *Leases*

The Institute made a **submission** to IASB ED of *Leases and* does not support the proposals as set forth in the ED for either lessees or lessors as it is considered that the ED, as currently worded, would introduce excessive complexity into the accounting requirements, while at the same time reducing the understandability and decision-usefulness of the information provided to users.

Although the Institute agreed that the existence of the two different accounting models currently for leases (the finance lease model and the operating lease model) has resulted in some structuring opportunities around “bright lines”, the Institute is not convinced that the proposals in the ED to gross up the lessee’s balance sheet in respect of all leases, to record all leasing expense as either amortization or finance expense and to record all cash outflows as financing cash outflows, will result in a more meaningful presentation of the lessee’s operations than the current requirements of IAS 17 *Leases*.

Until there has been a full conceptual framework analysis on the question of the nature of a present obligation, as opposed to a future obligation, the IASB has no conceptual mandate under existing IFRSs on which to take this project forward other than to more closely align the accounting by lessees for medium to long-term operating leases with the accounting requirements applicable to the holders of other intangible assets under IAS 38 *Intangible Assets* and the holders of other property, plant and equipment under IAS 16 *Property, Plant and Equipment*. The Institute believes this closer alignment could be achieved by requiring that the amount of the present value of minimum lease payments for leases with a lease term in excess of one year, as computed for operating leases under the existing requirements in IAS 17, is recorded by lessees as the measure of "cost" of the intangible "right to use" and that this amount would be amortized over its useful life.

It is considered that to go beyond this rather basic method of addressing the concerns over possible misuse by lessees of the bright line in IAS 17, and to make any changes to the current accounting requirements applicable to lessors, requires a more fundamental and conceptual approach to identifying the nature of "assets" transferred under a lease and the timing of that transfer. The Instituted does not consider that such an analysis can be conducted by starting with the lessee first. Instead the Institute considers that it is first necessary to consider the position of the lessor as the transferor and that therefore this issue should be properly addressed in the revenue project, since that project takes a broad approach to the concept of "transferring an asset" (i.e. which includes the provision of goods and services, including license arrangements) and sets out principles which are based on the timing of transfer of control over that "asset" to the customer.

Applying these principles would identify the circumstances in which the lessor should either recognize the transfer of an "asset" (in its broad sense as used in that project) at a single point in time (for example by derecognizing all or a portion of the asset underlying the lease in circumstances where the terms of the lease are such that the arrangement would currently be classified as a finance lease) or should recognize the transfer of the "asset" on a continuous basis (thereby earning a revenue stream from permitting restricted use of its own underlying assets for a limited period of time). It is expected the timing of revenue recognition may vary from one lease to the next, depending on the terms of the lease agreement, even though following a single set of principles.

The Institute accepts that it would be necessary to include further guidance in the final revenue standard to cover revenue arising from leasing arrangements and that in any event applying these concepts will involve judgement on a case by case basis, but it is considered that it would assist in making these judgments consistently if all the types of arrangements which result in revenue from customers and disposals of assets, including the revenue generated by lessors from the full range of leasing arrangements, were dealt with under a single standard. In addition, it would also greatly reduce the complexity and practical application difficulties for multiple arrangement contracts which include both leasing and service components.

Audit & Assurance

10. Request for Bank Confirmation of Information for Audit Purposes

The Institute issued HKSA 505 (Clarified) *External Confirmations* in June 2010 as part of the suite of HKSA (Clarified) which is effective for audits of financial statements for periods beginning on or after 15 December 2009. A new bank confirmation specimen, which has been developed by the Institute in consultation with the Hong Kong Association of Banks ("HKAB"), is attached as an appendix to HKSA 505

(Clarified). The changes principally relate to the inclusion of the following four additional items:

- Additional information on banking facilities granted to the audit client
- The issue and maturity date of acceptances outstanding in the bank's books
- Other guarantee information (other than shipping guarantees)
- Information in relation to derivative contracts/structured product contracts outstanding, including interest rate contracts and other derivative contracts/structured product contracts

The Institute's standard setting department has recently been informed by the HKAB that banks require different lead time for system changes and may not be ready for the new bank confirmation specimen. The HKAB has discussed this with the Institute and has issued the attached circular to its member banks to provide guidance on the transitional arrangements. Click **here** for more details.

For the four additional items that are added in the new bank confirmation specimen, members are advised to continue designing and performing audit procedures to obtain sufficient appropriate audit evidence on those items where banks are not able to provide the additional information as requested.

The Institute's standard setting department will continue to liaise with the HKAB on the complete transition on the use of the new bank confirmation specimen and will work towards full implementation by the end of 2011 for audits of financial statements with financial year ends of 31 December 2011 and thereafter and shall keep members posted of developments.

11. AASC Minutes

This **AASC minutes** on 16 November 2010 mainly covers:

- IAASB ED on proposed ISRS 4410 (Revised) *Compilation Engagements*
- Audit related implication from the proposed HK Int 5 *Presentation of Financial Statements – Classification by the Borrower of a Term Loan that contains a Repayment on Demand Clause*

International Consultation Papers

12. Invitation to Comment on IFAC ED on IFAC Policy Position Paper

The Institute has issued an **Invitation to Comment** on IFAC ED on IFAC Policy Position Paper #4, *A Public Interest Framework for the Accountancy Profession,* with comments requested by **1 March 2011**.

In order to consider and address issues in the accountancy profession on a consistent and clearly articulated basis, IFAC has developed a principles-based framework of the public interest, which can be applied to standard-setting, governance processes, policy analysis, and regulatory issues. Although mainly designed for use by IFAC itself, it may also be useful to the accountancy profession as well as policymakers, regulators, and business leaders.

IFAC considers that the accountancy profession, in serving the public interest, should be evaluated against three criteria: (1) consideration of costs and benefits for society as a whole; (2) adherence to democratic principles and processes; and (3) respect for cultural and ethical diversity. These criteria enable IFAC to assess the extent to which any policy, action, process, or condition is in the public interest.

The primary purposes of this paper are to explain how IFAC understand the public interest, and to be transparent about how IFAC will use that understanding to shape their decisions and actions. By exposing this paper for public comment, IFAC seeks both to receive input that can help them finalize their position and to stimulate other organizations to articulate how they interpret this fundamental concept.

International Meetings

13. International Accounting Standards Board

The IASB met on 1, 3, 8 and 13-17 December 2010, and discussed the following topics:

- Amortized cost and impairment
- Asset and liability offsetting
- Consolidation
- Fair value measurement
- Financial instruments: hedge accounting (education session)
- Financial instruments: impairment
- Income taxes
- IFRS 1 – *Severe hyperinflation*
- IFRS Advisory Council update
- Insurance contracts (education session)
- Post-employment benefits
- Revenue recognition

Click to view the IASB Update on the meetings on **1 December, 3 December, 8 December** and **13-17 December**. The IASB next meets in January 2011.

14. IFRS Interpretations Committee

The IFRS Interpretations Committee next meets in January 2011. Click **here** for the next meeting's details.

15. International Auditing and Assurance Standards Board

The IAASB next meets in March 2011. Click **here** for the next meeting's details and previous meeting summary.

16. International Ethics Standards Board for Accountants

The IESBA next meets in February 2011. Click **here** for the next meeting's details and previous meeting summary.

Useful Resources

17. Publications

The following are publications on various topics:

(i) HK Int 5:

- **Q & A** by the Institute

(ii) Year-end statements presentation:

- **Briefing sheet** by KPMG
- **Guide** by BDO

(iii) IFRS for SMEs:

- **Chinese translation** by IFRS Foundation

(iv) Illustrative financial statements:

- **Illustrative financial statements** by Deloitte (HKFRSs)
- **Illustrative financial statements** by Deloitte (IFRSs)
- **Disclosure checklist** by Deloitte
- **Compliance questionnaire** by Deloitte
- **Illustrative financial statements** by PwC

(v) HKFRS 9 for financial liabilities:

- **Staff summary** by the Institute
- **Update** by KPMG

(vi) Capital management disclosure:

- **Study** by the UK Accounting Standards Board

(vii) Progress report on convergence:

- **Report** by the IASB and the US FASB
- **IFRS outlook** by Ernst & Young

Comment Due Dates

17 January 2011: IASB Request for Views on Effective Dates and Transition Methods

31 January 2011: IFRS Foundation Paper for Public Consultation – Status of Trustee's Strategy Review

16 February 2011: IASB ED of *Hedge Accounting*

28 February 2011: IAASB ED on Proposed International Standard on Related Services ("ISRS") 4410 (Revised) *Compilation Engagements*

1 March 2011: IFAC ED on IFAC Policy Position Paper

Specialist Practices, Business Members and Advocacy

Corporate Finance

18. Acceptance of Mainland Accounting and Auditing Standards and Audit Firms for H-share Companies

Institute chief executive, Winnie Cheung, met reporters on 10 December 2010 to talk about the Hong Kong Exchanges and Clearing Limited ("HKEx") **consultation conclusions** on acceptance of mainland accounting and auditing standards and mainland audit firms for mainland incorporated companies listed in Hong Kong, which were released on the day. She also issued an **electronic circular** to all members to explain the details of the reciprocal arrangement and gave an **interview** to Metro Finance Radio on 16 December.

In view of the support of the majority of the respondents, HKEx decided to adopt the proposals set out in its **consultation paper** on the subject, published in August 2009, which sought public comments on a framework to:

- Allow mainland incorporated issuers to prepare their financial statements using mainland accounting standards;
- Allow mainland audit firms vetted, nominated and endorsed by the Central Government's Ministry of Finance and the China Securities Regulatory Commission to service these issuers using mainland auditing standards; and
- Provide for a reciprocal arrangement. This would allow companies incorporated or registered in Hong Kong and listed in the mainland to prepare their financial statements using Hong Kong Financial Reporting Standards or International Financial Reporting Standards, to be audited by Hong Kong audit firms that are vetted, nominated, endorsed and registered with the HKICPA and to use Hong Kong

Standards on Auditing or International Standards on Auditing for their audits.

The related **amendments to main board listing rules** and **amendments to GEM listing rules** are effective from 15 December 2010. On 23 December, HKEx published subsequent **response** to market comments on its decision.

19. Institute Comments on Proposals to Extend Conflicts Requirements on Research Reports

As reported in **TechWatch no. 96**, Securities and Futures Commission ("SFC") consulted the market on proposals to expand the scope of the requirements governing conflicts of interest where analysts prepare research reports on initial public offerings and on real estate investment trusts applying for listing, or on listed entities.

While the Institute's **submission** is generally supportive of the proposed measures, which aim to achieve fairness, efficiency and transparency in Hong Kong's capital market, the Institute also suggests that further practical guidance to support implementation of the proposals would be desirable.

20. HKEx Consultations

On 17 December, HKEx published the following consultation papers:

(i) Proposed changes to the requirements for the listing of debt issues to professional investors

This **consultation paper** seeks views on the following proposed changes to the requirements for debt securities issued to professional investors only:

- Presenting the applicable listing rules in more accessible language
- Aligning the definition of professional investor in the listing rules with the definition in the Securities and Futures Ordinance
- Replacing the current detailed disclosure requirements in listing documents with an obligation to include information that is customary for offers of debt securities to professionals
- Streamlining the application, vetting and approval procedures
- Removing provisions relevant only to retail investors from the eligibility requirements for applicants and continuing obligations

The consultation period will end on 18 February 2011.

(ii) Proposed changes to the current market practice of ex-entitlement trading

This **consultation paper** seeks views on whether shares should be traded ex-entitlement only after the entitlement has been approved by shareholders.

According to current market practice in Hong Kong, there is no restriction on the timing of the record date for a conditional entitlement in Hong Kong. A company can set the record date before or after the date of shareholder approval. However, the way a company designates its record date for the entitlement will have an impact on the orderly trading of its stocks.

It is believed that trading ex-entitlement only after shareholder approval, as currently proposed, would remove the risk of uncertainty and improve the operation of the Hong Kong securities market. It would also bring Hong Kong into line with international and mainland market practices.

The consultation period will end on 28 February 2011.

Members are welcome to reflect their views on the above consultation papers to the Institute, by email sent to <**commentletters@hkicpa.org.hk**>, under the heading “HKEx Consultations”, on or before 7 February 2011.

21. HKEx Streamlines Document Requirements

HKEx has removed the requirements for listed issuers to file printed copies of various documents to the stock exchange, including:

- Financial reports
- Takeover documents
- Circulars for repurchase mandates and the corresponding resolutions passed at general meetings
- Documents issued to holders of interests in collective investment schemes

The related **amendments to main board listing rules** and **amendments to GEM listing rules** took effect on 1 January 2011.

22. HKEx Continues to Pre-Vet Announcements about Very Substantial Transactions

On 10 December, HKEx **announced** that it would not extend the post-vetting regime to announcements about very substantial transactions for the time being.

The post-vetting regime was implemented on 1 January 2009 following market support in the consultation in 2008. HKEx adopted a phased approach to shift its regulatory focus from pre-vetting announcements to reviewing and monitoring them after publication. Under the current regime, HKEx does not pre-vet a majority of announcements, including announcements about issues of securities, notifiable transactions ("major" or below), connected transactions and matters involving trading arrangements.

HKEx says its experience with the post-vetting regime has been positive. However, in the light of the current diverse market views on the listing rule interpretations for reverse takeovers, cash companies and sufficiency of operations or assets, HKEx considers it appropriate and necessary to continue to pre-vet these categories of announcements, for the time being, to maintain a fair and orderly market.

23. SFC Publishes Annual Review Report of HKEx's Performance on Regulation of Listing Matters

On 23 December, SFC published a **report** on its 2010 annual review of HKEx's performance on the regulation of listing matters during 2009.

The SFC is of the view that the operational procedures and decision-making processes reviewed were appropriate to enable HKEx to discharge its statutory obligation to maintain an orderly, informed and fair market in 2009. It is also satisfied that HKEx has taken steps to address the recommendations in its previous report.

In order to discharge its statutory responsibility to supervise, monitor and regulate the activities carried on by the HKEx, the SFC has identified certain areas where it recommends that HKEx should continue its efforts to enhance its performance.

Corporate Governance

24. HKEx Publishes Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules

In December 2010, HKEx published a **consultation paper** on proposed changes to the Code on Corporate Governance Practices ("the Code") and certain Listing Rules relating to corporate governance.

Under the proposals, some Code Provisions ("CPs") will be upgraded to become Rules and a number of existing Recommended Best Practices ("RPBs") will be upgraded to become CPs. The principal aim of the amendments is to encourage better accountability of issuers and directors. Some of the proposals are highlighted below:

- Directors' duties and time commitments: To expand the Rules on directors' duties, provide guidance to directors, and revise the Code to recommend greater disclosure of time commitments by directors, particularly independent non-executive directors ("INEDs"). Market views are also sought on whether HKEx should introduce a Rule or a CP to limit the number of INED positions an individual may hold and if so, determine the maximum number. If there is strong support for such an approach, HKEx will conduct a further consultation on this specific topic before making any Rule change.

- Directors' training and ratio of INEDs: To upgrade the RBP on directors' training to a CP, and further propose that directors should spend eight hours training on developments in law, regulations and topics relevant to their duties. To introduce a Rule that INEDs should constitute one third of an issuer's board, with proposed transitional period with full compliance mandatory by 31 December 2012.

- Board committees**:**

  (i) HKEx proposes a rule to require issuers to set up a remuneration committee, with the committee chairman and a majority of the members being INEDs;

  (ii) to upgrade the current RBPs relating to the nomination committee's establishment, composition and terms of reference to become CPs;

  (iii) to introduce new CPs that set out the duties and composition of a corporate governance committee. The establishment of the committee should be a RBP, as some issuers may have resource constraints and would prefer an existing board committee to carry out these functions; and

  (iv) to revise the relevant CP so that instead of once a year, the audit committee should meet at least twice a year with the issuer's external auditor. A new RBP is proposed stating that the audit committee should establish a "whistleblowing" policy enabling employees and those who deal with the issuer to raise concerns.

- Chairman and CEO: To revise the Code by upgrading existing RBPs to CPs to emphasize the chairman's role and responsibility in leading the issuer's corporate governance efforts, and to propose rules requiring that a chief executive officer ("CEO") who is not a director to disclose his or her appointment, resignation, re-designation, retirement or removal, as well as remuneration.

Other proposed changes cover areas such as communication with shareholders, company secretary requirements and board evaluation.

The consultation period will end on 18 March 2011. Members are welcome to reflect their views to the Institute, by email sent to <**commentletters@hkicpa.org.hk**>, under the heading "Consultation on review of the Code on Corporate Governance Practices and associated Listing Rules", on or before **28 February 2011**.

Taxation

25. Double Taxation Agreements

Hong Kong's double taxation agreements ("DTA") with **United Kingdom** and **Brunei** came into effect in December 2010 and the DTA with **Austria** took effect on 1 January 2011.

26. Bill to Introduce Special Stamp Duty

Following from the government's announcement to introduce a special stamp duty on residential properties to curb speculation (see details in **TechWatch no. 98**), the **stamp duty (amendment) no. 2 bill 2010** was gazetted on 3 December 2010. Click the **Legislative Council brief** for more information on the bill.

27. Deprecation Allowance for Plant & Machinery

In this latest **question and reply**, the secretary for financial services and the treasury repeated that, following a review of the position, the government does not intend to relax the existing restrictions under section 39E and allow full or partial depreciation allowances on plant and machinery in "import processing" cases (see previous exchange, reported in **TechWatch no. 98**).

28. New Service Integrating eTax and Other eAccounts with the Government

The Inland Revenue Department's website refers to a **new service** that allows users to integrate access to their various personal accounts with the government, including their etax account, through a personalized portal on GovHK, and to receive government information of interest to them.

29. Legco Questions on Tax Issues

The following are recent Legislative Council questions relating to tax matters:

- **Impact of the abolition of estate duty and duty on alcoholic beverages**
- **Review and formulation of tax policies**
- **Tax assessments**

Legislation & Other Initiatives

30. Commencement of Companies (Amendment) Ordinance 2010 and Business Registration (Amendment) Ordinance 2010

(i) Provisions facilitating electronic communications

The provisions of the **Companies (Amendment) Ordinance 2010** ("C(A)O"), which facilitate website communications by companies and strengthen the company name registration system, come into operation on 10 December 2010. For details, please refer to the **Companies Registry External Circular No. 1/2010** and the related **press release** issued by the Companies Registry on 9 December 2010.

(ii) Commencement of parts 2 and 5 of C(A)O

Parts 2 and 5 of the **C(A)O**, which streamline the company incorporation procedure and facilitate electronic applications for company incorporation, will come into operation on 21 February 2011, as announced in a **commencement notice** published in the gazette on 10 December 2010.

(iii) Commencement of Business Registration (Amendment) Ordinance 2010

The **Business Registration (Amendment) Ordinance 2010**, which enables the Companies Registry to provide a one-stop service for company incorporation and business registration, will also come into operation on 21 February 2011 (See the **commencement notice** published in the gazette).

31. Combating Money Laundering/Terrorist Financing

Members may wish to note that the following notices and publications in relation to combating money laundering/terrorist financing ("ML/TF"):

- Legal notice **133** and **134**: Commencement notices for the remaining uncommenced provisions of the United Nations (Anti-Terrorism Measures) Ordinance and the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004. Click to view a **note** on full commencement of the ordinance.
- **Money laundering using trusts and company service providers**: Trust and company service providers are often misused for ML/TF. This report evaluates the effectiveness of the FATF 40+9 recommendations for these service providers and their role in combating ML/TF.

- **Money laundering using new payment methods**: Following the **2006 report** on new payment methods (prepaid cards, mobile payments and internet payment services), these methods have become more common and cases where these methods have been misused for ML/TF have increased. This report, among other things, looks at the risk factors, risk mitigants and case studies relating to the misuse of these methods for ML/TF.

For more background information on the current law in Hong Kong relating to anti-money laundering, see the Institute's **Legal Bulletin 1**, "Requirements on anti-money laundering, anti-terrorist financing and related matters".

Useful Resources

32. Library Resources

Featured titles and **new books** of high reference value for members are now available. In addition, members can **login** to the **e-Library** and access e-journals and e-books on a wide range of business subjects.

33. Other Publications

The following articles/publications on topical issues may be of interest to members:

(i) In December 2010, HKEx published:

- **Guidance Letter** on documentation requirements for IPO cases (GL23-10)
- two **listing decisions** on (i) the independent shareholder approval requirement for rights issues under Chapter 7 of the listing rules (LD113-1) and (ii) qualifications of an overseas issuer's auditors (LD114-1)
- **report** on initial public offering applications, delisting and suspensions (as at 31 December 2010)

(ii) In December 2010, SFC published:

- **quarterly report for July to September 2010**, which highlighted major plans to refine Hong Kong's financial regulatory system
- **Takeovers Bulletin** (Issue no. 15), a periodic newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Repurchases

(iii) Articles on corporate governance by Deloitte:

- **Deloitte's Audit Committee Program: Highlights and Insights**
- **The 3 Cs of Shareholder Engagement**
- **Asia Pacific Economic Outlook: China, Japan, Malaysia, South Korea**

(iv) **The Vodafone case - Bombay high court ruling** by KPMG

(v) **Progress report in implementing the internationally agreed tax standard on exchange of information** by OECD

(vi) **Paying taxes 2011** by World Bank Group and PwC (see figure 1.3 on page 8 for ranking of "where is paying taxes easy - and where not?")