<u>Comments on the Proposed Amendments to the New Companies Ordinance (Cap.622)</u>

1. The Bar has the following comments on the proposed amendments to the new Companies Ordinance (cap.622) ("**the CO**"), as attached to the letter dated 20 July 2016 from the Registrar of Companies to the Hong Kong Bar Association.

2. Item 1: the Bar supports the proposed amendment.

   The Bar notes that under the former CO, "holding company" included "parent undertaking" in relation to the provisions on accounts and audits. The same applied to the 2^{nd}, 3^{rd} and 4^{th} Schedules, which concerned matters required to be included in the prospectus or the substituting documents when a private company applied to become a public company.

   Under the new CO, s.94 requires financial statements prepared in accordance with s.379 to be filed with Companies Registry when there is a change in the status of a private company. This preserves the previous requirements under the former 2^{nd}, 3^{rd} and 4^{th} Schedules. Thus, it is sufficient for the proposed provision to be added to s.357 instead of s.13 of the CO.

3. Item 2: If the proposed relaxation means that the reporting exemption may also apply to a group of companies having both private companies and companies limited by guarantees, and all the companies in that group will still need to satisfy the size test applicable to them, the Bar has no adverse comment on the proposal.

4. Item 3: the Bar does not support the proposal. Disclosure of the names of the directors of the subsidiary undertaking is an important aspect of proper corporate governance. This is reflected in the fact that under the CO and the articles of a company, there are special provisions governing

the approval of related party transactions involving directors of that company. Thus, the identity of the directors is an important information which should be disclosed in the directors' reports. It is difficult to see why such disclosure in the directors' report, which only needs to be done once in a year, can be said to be onerous. Indeed, the Bar considers that far from removing the requirement from s.390(3), there should be an additional requirement that the list of names of directors of the subsidiary undertakings can be inspected at the registered office of the company, or at its website.

5. Item 4: the Bar supports the proposal but suggests that consideration should be given to the permissible uses of the email address for the purpose of giving notice to the company and to define or specify such use in the CO. This is necessary to avoid any argument as to whether sending a notice (e.g. s.782) to the company's email is sufficient or constitute proper service. This is particularly so when it is to be expected that once the email address is registered with the Companies Registry, third parties dealing with the company will inevitably send documents or notices to such email address.

6. In addition, the Bar considers that proposed amendment should be made to require a company which does not have an email address should supply the email address of one of its directors.

7. Items 5 & 6: the Bar supports the proposed amendments.

8. Item 7: the Bar has no comment on the proposed amendments.

9. Item 8: see response on Item 4 above.

10. Item 9: The bar supports the proposed amendments as it aligns the requirements under s.792 with respect to Hong Kong companies. It is not clear why it is proposed that the Financial Secretary should be

empowered to make further regulations; it appears sufficient to add, under s.792(1), that the company must comply with the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap.622B).

11. Item 10: it is not understood how the proposed amendments can interact with s.780. Under s.780, a company in receipt of a notice served by the Registrar only needs to cease carrying on its business under the offending name at the end of 2 months after the receipt of the notice. But the proposed amendments appear to suggest that, once a notice is given by the Registrar, the company must immediately cease to display the offending name as per s.792. Such difference in the timeframe is undesirable. The Bar suggests considers it appropriate to include in the proposed amendments the following provisions:-

    11.1. The company shall cease to display the offending name no later than 2 months after the receipt of the notice issued under s.780.

    11.2. On receiving the notice issued under s.780, the company must also, in satisfying s.792, display a notice alongside its name to the effect that the name of the company has been disapproved by the Registrar under s.780 of the CO, until another name is approved by the Registrar, or 2 months after the receipt of the notice, whichever is later.

12. Item 11: the Bar supports the proposal.

13. Item 12: see our comment on Item 4 above.

14. Item 13: the Bar does not support HKICPA's view that the reporting exemption should be extended to groups with non-Hong Kong subsidiaries. The Bar does not see any proper basis to exempt a holding company from reporting obligations simply because it has non-Hong

Kong subsidiaries. It has been recognized that the business practice in Hong Kong is heavily inclined towards the use of corporate structures involving foreign companies: see the observations of the Court of Final Appeal in *Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501, §28 (*Yung Kee*) and Harris J (the current companies Judge) in *Re Gottinghen Trading Ltd* [2012] 3 HKLRD 453, §25. It is contrary to corporate transparency to extend the scope of the reporting exemption in the manner proposed.

15. Item 14: see our comment on Item 4 above.

Hong Kong Bar Association
6 September 2016