

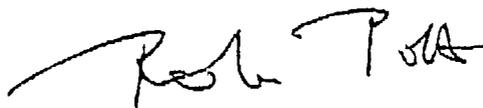
HONG KONG SOCIETY OF ACCOUNTANTS ("HKSA")

GROUP ACCOUNTS

OPINION

1. I am asked to advise HKSA in relation to a proposal to revise SSAP7 to require the consolidation in group accounts of companies over which a holding company has control as measured by a test based on or similar to that in IAS 22. The proposal would require the consolidation of certain entities, which would not be "subsidiaries" as defined in section 2 (4) of the Companies Ordinance. I do not think the proposals can be implemented without amending the Companies Ordinance. In this Opinion I explain the above conclusions.
2. The expressions "subsidiary" and "holding company" are terms of art and are specifically defined by sections 2 (4) and 2 (7) of the Companies Ordinance. For the purposes of the Ordinance the definitions are exhaustive. There is no such thing as a "common law" subsidiary or holding company. The exhaustive definitions carry through into the substantive provisions of the Ordinance.
3. The critical sections for present purposes are sections 124 (1) and 125 (1). Section 124 (1) requires group accounts dealing with the state of affairs and profit and loss of the company and its subsidiaries to be laid before the company in general meeting. Section 125 (1) deals with the form of group accounts. Section 126 (1) requires group accounts to give a true and fair view of the state of affairs and profit and loss of the company "and the subsidiaries dealt with thereby as a whole." The statutory requirements for group accounts require the consolidation of all subsidiary companies as defined by section 2 (4).

In addition, I do not think this permits the consolidation of companies which are not subsidiaries in the statutory sense. Accounts consolidating companies which are not subsidiaries in the statutory sense would not be "group accounts" as defined by section 124 (1). Indeed, the Companies Ordinance requires accounts to contain certain information as to companies, which are not subsidiary companies as defined by the Ordinance (see section 129). I think the provisions as to group accounts are both mandatory and exhaustive in the sense that it is not permitted to extend the ambit of the provisions to companies, which are not subsidiaries as defined by the Ordinance.

A handwritten signature in black ink, appearing to read "Robin Polts". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Robin Polts QC
22 November 1999