

COMPANIES (AMENDMENT) BILL 2004

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for  
Financial Services and the Treasury

Clause

Amendment Proposed

New

By adding -

**"1A. Interpretation**

Section 2(5) of the Companies Ordinance (Cap. 32) is amended by repealing "or concurrence".

2

- (a) By deleting "Companies Ordinance (Cap. 32) is amended by adding" and substituting "following is added".
- (b) In the proposed section 2B(2)(b), by adding "or subsidiary company" after "to a subsidiary".
- (c) In the proposed section 2B(3) -
- (i) by adding "129," after "128,";
  - (ii) by adding "161B, 161BA," after "161,".

3

By deleting the clause and substituting -

**"3. General provisions as to contents**

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**and form of accounts**

Section 123 is amended -

- (a) in subsection (3), by repealing "in the following provisions of this section or";
- (b) by repealing subsection (4) and substituting -

"(4) Where compliance with the requirements of the Tenth Schedule and other requirements of this Ordinance as to the matters to be included in a company's balance sheet and profit and loss account or in a statement annexed to those accounts -

- (a) would not be sufficient to give a true and fair view of the state of affairs or the profit or loss of the company; or
- (b) is inconsistent with the requirement to give a true and

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fair view of the  
state of affairs  
or the profit or  
loss of the  
company,

then -

- (c) in the case of  
paragraph (a),  
additional  
information that  
is necessary to  
give a true and  
fair view  
thereof shall be  
given in the  
accounts or  
statement, as  
the case may  
require; and
- (d) in the case of  
paragraph (b),  
the directors of  
the company  
shall depart  
from those  
requirements to  
the extent that  
is necessary to

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give a true and  
fair view  
thereof with the  
reasons for and  
particulars and  
effects of such  
departure to be  
given in the  
accounts or in a  
statement  
annexed to those  
accounts."."

4 By deleting the clause.

5(b) (a) By deleting the proposed section 126(4) and  
substituting -

"(4) Where compliance with the  
requirements of the Tenth Schedule and  
other requirements of this Ordinance as  
to the matters to be included in a  
company's group accounts or in a  
statement annexed to the group accounts -

(a) would not be sufficient to  
give a true and fair view  
of the state of affairs or  
the profit or loss of the  
company and its

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subsidiaries; or

- (b) is inconsistent with the requirement to give a true and fair view of the state of affairs or the profit or loss of the company and its subsidiaries,

then -

- (c) in the case of paragraph (a), additional information that is necessary to give a true and fair view thereof shall be given in the group accounts or statement, as the case may require; and
- (d) in the case of paragraph (b), the directors of the company shall depart from those requirements to the extent that is necessary to give a true and fair view thereof with the reasons for and particulars and effects of such departure to be given in a statement annexed to

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the company's group  
accounts."

(b) By deleting the proposed section 126(5).

7(a) By deleting "'or established" after  
"incorporated'" and substituting "'where the  
subsidiary is a body corporate," before "the"."

7 By adding -

"(aa) in subsection (1), by adding -

"(ba) where the subsidiary is not a  
body corporate, the address of  
its principal place of  
business;"."

7(b) In the Chinese text, by deleting the proposed  
section 128(2)(a) and substituting -

"(a) 如憑藉第 2(4)、(5)、(6)及(7)條，某屬法人團體的企  
業(“前者”)的股份會為斷定該企業是否另一企業(“後  
者”)的附屬公司的目的，而被視為由後者持有或並非由  
後者持有，則前者的股份須視為由後者持有或(視屬何情  
況而定)並非由後者持有；及”。

8 In the proposed section 129A(1), by deleting  
everything after "general" and substituting -

"meeting -

(a) the name of the undertaking  
regarded by the directors as

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being the company's ultimate parent undertaking; and

(b) if known to them -

(i) where the undertaking is a body corporate, the country in which it is incorporated; and

(ii) where the undertaking is not a body corporate, the address of its principal place of business."

10 (a) In the proposed section 140(2)(d)(i), by deleting "the subsidiary" and substituting "a subsidiary".

(b) In the proposed section 140(2)(d)(ii), by deleting "the parent" and substituting "a parent".

18 In the proposed Twenty-third Schedule -

(a) within the square brackets, by deleting ", 124";

(b) in section 1(1), in the definition of "shares", by deleting ", for the purposes of the provisions specified under section

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2B(3) of this Ordinance,";

(c) in section 1(1), in the definition of "undertaking" -

(i) by deleting ", in relation to the provisions specified under section 2B(3) of this Ordinance, includes" and substituting "means";

(ii) in paragraph (a), by deleting "or corporation";

(iii) in paragraph (b), by adding "or" at the end;

(iv) in paragraph (c), by deleting "body" and substituting "association";

(d) in section 2(1), by deleting everything after "if -" and before "and controls" and substituting -

"(a) (i) in the case where both the parent undertaking and the subsidiary undertaking are bodies corporate, the subsidiary undertaking is a subsidiary of the parent undertaking by

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virtue of section  
2(4), (5), (6) and  
(7) of this  
Ordinance; or

(ii) in any other case,  
the parent  
undertaking -

(A) holds a majority  
of the voting  
rights in the  
subsidiary  
undertaking;

(B) is a member of  
the subsidiary  
undertaking and  
has the right to  
appoint or  
remove a  
majority of its  
board of  
directors; or

(C) is a member of  
the subsidiary  
undertaking";

(e) by renumbering section 2(1)(c) as section  
2(1)(b);

(f) in section 2(2), by deleting "subsection  
(1)(b)" and substituting "subsection

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(1)(a)(ii)";

- (g) by deleting section 2(3) and substituting -

"(3) An undertaking shall be treated as the parent undertaking of another undertaking if a subsidiary undertaking of the first-mentioned undertaking is, or is to be treated as, the parent undertaking of that other undertaking; and references to a subsidiary undertaking of the first-mentioned undertaking shall be construed accordingly.";

- (h) in section 2, by adding -

"(4) Sections 3 to 10 contain provisions explaining expressions used in this section and otherwise supplementing this section.";

- (i) in section 3(1), by deleting "section 2(1)(b)(i) and (iii)" and substituting "section 2(1)(a)(ii)(A) and (C)";

- (j) by deleting section 3(3);

- (k) in section 4, by deleting "section 2(1)(b)(ii)" and substituting "section 2(1)(a)(ii)(B)";

- (l) in section 4(c), by deleting "or concurrence";

- (m) in section 5, by deleting "section

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2(1)(c)" and substituting "section  
2(1)(b)";

(n) in section 5(a), by deleting "有權對該另一  
企業發揮支配性影響力" and substituting "有對該  
另一企業發揮支配性影響力的權利";

(o) in section 5(b), by deleting "a right"  
and substituting "such a right";

(p) in section 7(c), by deleting "or  
concurrence";

(q) in section 8(a), by deleting "and" and  
substituting "or".

19(1) By adding "in relation" after "apply".

19(2) By deleting everything after "apply" and  
substituting "in relation to a company until that  
amendment applies in relation to the company.".

20 By deleting "sections 124(2), 126(2)" and  
substituting "sections 124(2)".

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