

**《公司條例草案》委員會
《公司條例草案》第 1 部—導言
委員會審議階段修正案**

下表載述政府當局就《公司條例草案》第 1 部(“導言”)(第 1 至 18 條及附表 1)擬議提出的委員會審議階段修正案(修正案)。政府當局在擬訂這些建議時，已考慮包括議員、各團體／代表及立法會法律顧問在內的各方意見。標示按數序排列的修訂建議的文本載於附件，以供參閱。

本列表所採用的縮寫如下：

法案委員會：《公司條例草案》委員會

草案：《公司條例草案》

《公司條例》：《公司條例》(第 32 章)

修正案：委員會審議階段修正案

項目	有關事宜／ 條文	擬議的委員會審議階段修正案	備註
1	第 2 條 釋義	(I) 修訂“financial year (財政年度)”的定義為 “ financial year (財政年度) — <u>see section 363, in relation to a company, means a financial year of the company determined in accordance with Division 3 of Part 9</u> ”。	<ul style="list-style-type: none"> 這項修正案是因應立法會法律顧問就標示定義的關注而提出的。修正後的定義會指向整個第 9 部的第 3 分部，該分部與根據草案如何決定公司的財政年度有關。

項目	有關事宜／ 條文	擬議的委員會審議階段修正案	備註
		(II) 在“predecessor Ordinance (《前身條例》)”的定義中，“section 1”改為“section 2”。	<ul style="list-style-type: none"> • 因應附表 9 的修訂，有需要提出這項修正案。
		(III) 刪除“special notice (特別通知)”的定義。	<ul style="list-style-type: none"> • 這項修正案是因應立法會法律顧問就標示定義的關注而提出的。我們認為在規定給予“特別通知”的條文(即第 391、394、410 及 453 條)中加入附註以提醒讀者注意第 568 條，比在第 2 條中加入標示更為合適。
		(IV) 刪除“undertaking (企業)”的定義。	<ul style="list-style-type: none"> • “Undertaking”一字在草案不同條文中有不同意思，因此在第 2 條中就“undertaking”作出全條草案均適用的定義並不合適。“Undertaking”會在附表 1 中就附表 1 的目的作出定義。我們亦會檢討其他條文(例如第 513 條，請參閱立法會文件編號 CB(1)1490/11-12(01)“政府當局就二零一一年十二月二及九日會議採取關於《公司條例草案》第 11 部的跟進行動”第 23 段。
		(V) 修訂“written resolution (書面決議)”的定義為“ written resolution (書面決議) — see section ”	<ul style="list-style-type: none"> • 這項修正案是因應立法會法律顧問就標示定義的關注而提出的。修正後的定義會指向整個第 12 部第 1 分部第 2 次分部，該次分部與書面決議有

項目	有關事宜／ 條文	擬議的委員會審議階段修正案	備註
		546Subdivision 2 of Division 1 of Part 12”。	關。
2	第 3 條 責任人	在“責任人”的表述中刪除“fails to take all reasonable steps to prevent”。	<ul style="list-style-type: none"> 委員在法案委員會會議上關注“責任人”的新表述方式下“沒有採取一切合理步驟防止”違反或不遵從規定的部分會涵蓋對可能會發生違規事件全不知情的獨立非執行董事，以及純粹疏忽而通常資源及法律知識有限的中小型企業的董事。這項修正案是因應委員的關注而提出的。 請參閱立法會文件編號 CB(1)2636/10-11(01)“跟進二零一一年五月十三日會議關於第 1 部“責任人”的表述方式”第 2 至 9 段。
3	第 5 條 不活動公司	從第 5(7)條中刪除對信託公司的提述(第(7)(f)款)。	<ul style="list-style-type: none"> 正如在立法會文件編號 CB(1)1052/11-12(04)“第 1 部(導言)對照表”的附表所解釋，根據《信託人條例》(第 29 章)第 77 條，信託公司不得為私人公司，因此沒有需要把這類公司納入獲豁免公司的名單內。
4	第 15 條 母企業、母公 公司及附屬企業	刪除對母公司的提述。	<ul style="list-style-type: none"> 提出這項修正案是因為草案內並沒有使用“parent company”一詞。

項目	有關事宜／ 條文	擬議的委員會審議階段修正案	備註
5	附表 1 第 1 條 釋義	(I) 修訂第 1(c)(i)條為“…， or <u>giving rise to a liability to contribute to the losses, …</u> ”。	<ul style="list-style-type: none"> 這是因應立法會法律顧問的意見而提出的修正案，屬草擬上的修改，以令第 1(c)(i)及(ii)條的用語一致。
		(II) 加入“undertaking (企業)”的定義。	<ul style="list-style-type: none"> 請參閱上列第 1(IV)項。
6	附表 1 第 2 條 母企業	在第 2(2)條，以“any document constituting or regulating”取代“the constitution, or an equivalent constitutional document, of”。	<ul style="list-style-type: none"> 這是因應立法會法律顧問的意見，為令條文更清晰而提出的修正案，屬草擬上的修改。
7	附表 1 第 4 條 母公司	刪除條文。	<ul style="list-style-type: none"> 提出這項修正案是因為草案內並沒有使用“parent company”一詞。

財經事務及庫務局
 公司註冊處
 二零一二年四月十三日

2. Interpretation

(1) In this Ordinance—

accounting transaction (會計交易), in relation to a company, means a transaction that is required by section 369 to be entered in the company's accounting records, excluding a transaction arising from the payment of any fee that the company is required by an Ordinance to pay;

articles (章程細則), in relation to a company, means the articles of association of the company;

Note—

Please also see section 93. A condition of an existing company's memorandum of association is to be regarded as a provision of the company's articles.

associated company (有聯繫公司), in relation to a body corporate, means—

- (a) a subsidiary of the body corporate;
- (b) a holding company of the body corporate; or
- (c) a subsidiary of such a holding company;

body corporate (法人團體)—

- (a) includes—
 - (i) a company; and
 - (ii) a company incorporated outside Hong Kong; but
- (b) excludes a corporation sole;

certified public accountant (practising) (執業會計師) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

commencement date (生效日期), in relation to any provision of this Ordinance, means the date on which that provision comes into operation;

Companies Register (公司登記冊) means the records kept under section 26;

company (公司) means—

- (a) a company formed and registered under this Ordinance; or
- (b) an existing company;

company secretary (公司秘書) includes any person occupying the position of company secretary (by whatever name called);

contributory (分擔人), in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up;

Court means the Court of First Instance;

court (法院) means a court of competent jurisdiction of the Hong Kong Special Administrative Region and includes a magistrate;

debenture (債權證), in relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company;

director (董事) includes any person occupying the position of director (by whatever name called);

document (文件) includes—

- (a) a summons, notice, order and any other legal process; and
- (b) a register;

electronic record (電子紀錄) means a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

existing company (原有公司) means a company formed and registered under a former Companies Ordinance;

financial year (財政年度)—~~see section 363, in relation to a company, means a financial year of the company determined in accordance with Division 3 of Part 9~~¹;

former Companies Ordinance (《舊有公司條例》) means—

- (a) the Companies Ordinance 1865 (1 of 1865);
- (b) the Companies Ordinance 1911 (58 of 1911); or
- (c) the predecessor Ordinance;

founder member (創辦成員)—

- (a) in relation to a company formed and registered under this Ordinance, means a person who signs on the company's articles for the purposes of section 62(1)(a); or
- (b) in relation to an existing company, means a person who subscribed to or signed on the company's memorandum of association;

group of companies (公司集團) means any 2 or more bodies corporate one of which is the holding company of the other or others;

identity card (身分證) means an identity card issued under the Registration of Persons Ordinance (Cap. 177);

Index of Company Names (《公司名稱索引》) means the index of names kept under section 28;

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

listed company (上市公司) means a company that has any of its shares listed on a recognized stock market;

listing rules (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates;

manager (經理), in relation to a company—

- (a) means a person who performs managerial functions in relation to the company under the directors' immediate authority; but
- (b) excludes—
 - (i) a receiver or manager of the company's property; and
 - (ii) a special manager of the company's estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

member (成員), in relation to a company, means—

- (a) a founder member of the company; or
- (b) a person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members;

non-Hong Kong company (非香港公司) means a company incorporated outside Hong Kong that—

- (a) establishes a place of business in Hong Kong on or after the commencement date of Part 16; or
- (b) has established a place of business in Hong Kong before that commencement date and continues to have a place of business in Hong Kong at that commencement date;

officer (高級人員), in relation to a body corporate, includes a director, manager or company secretary of the body corporate;

Official Receiver (破產管理署署長) means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);

ordinary resolution (普通決議)—see section 553;

predecessor Ordinance (《前身條例》) means the Companies Ordinance (Cap. 32) as in force from time to time before the commencement date of section ~~24~~² of Schedule 9;

¹ Item 1(I) / 第 1(I)項

² Item 1(II) / 第 1(II)項

recognized exchange company (認可交易所) means a company recognized under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company for operating a stock market;

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

redeemable shares (可贖回股份) means shares that are to be redeemed, or are liable to be redeemed, at the option of the company or the shareholder;

registered non-Hong Kong company (註冊非香港公司) means a non-Hong Kong company that is registered in the Companies Register as a registered non-Hong Kong company;

Registrar (處長) means the Registrar of Companies appointed under section 20(1);

reserve director (備任董事), in relation to a private company, means a person nominated as a reserve director of the company under section 446(1);

Secretary (局長) means the Secretary for Financial Services and the Treasury;

shadow director (幕後董事), in relation to a body corporate, means a person in accordance with whose directions or instructions (excluding advice given in a professional capacity) the directors, or a majority of the directors, of the body corporate are accustomed to act;

share (股份)—

- (a) means a share in a company's share capital; and
- (b) if any of the company's shares is converted into stock, includes stock;

share warrant (股份權證) means a warrant—

- (a) stating that the bearer is entitled to the shares specified in the warrant; and
- (b) enabling the shares to be transferred by delivery of the warrant;

~~**special notice** (特別通知)—see section 568;³~~

~~**special resolution** (特別決議)—see section 554;~~

specified form (指明格式) means the form specified under section 22;

~~**undertaking** (企業) means—~~

- ~~(a) a body corporate;~~
- ~~(b) a partnership; or~~
- ~~(c) an unincorporated association carrying on a trade or business, whether for profit or not;⁴~~

unlisted company (非上市公司) means a company that does not have any of its shares listed on a recognized stock market;

~~**written resolution** (書面決議)—see section 546Subdivision 2 of Division 1 of Part 12⁵.~~

(2) In this Ordinance—

- (a) a reference to this Ordinance includes any subsidiary legislation made under this Ordinance; and
- (b) a reference to a provision of the predecessor Ordinance, except in Part 21 and Schedule 10, includes the provision, or such part of the provision, having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) In this Ordinance—

- (a) a reference to a manager of the property of a body corporate includes a manager of part of that property;
- (b) a reference to a receiver of the property of a body corporate includes—
 - (i) a receiver of part of that property; and
 - (ii) a receiver of the income arising from that property or part of that property; and

³ Item 1(III) / 第 1(III)項

⁴ Item 1(IV) / 第 1(IV)項

⁵ Item 1(V) / 第 1(V)項

- (c) a reference to the appointment of a manager or receiver made under powers contained in an instrument includes—
 - (i) an appointment made under powers conferred by an Ordinance; and
 - (ii) an appointment made under powers that, by virtue of an Ordinance, are implied in and have effect as if contained in an instrument.
- (4) For the purposes of this Ordinance—
 - (a) a document or information is sent or supplied in hard copy form if it is sent or supplied—
 - (i) in paper form; or
 - (ii) in a similar form capable of being read;
 - (b) a document or information is sent or supplied in electronic form if it is sent or supplied—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.
- (5) In subsection (4)—
 - (a) a reference to sending a document—
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; but
 - (ii) excludes serving the document; and
 - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.
- (6) A note located in the text of this Ordinance is provided for information only and has no legislative effect.

3. Responsible person

- (1) This section applies—
- (a) where a provision of this Ordinance provides that a responsible person of a company or non-Hong Kong company commits an offence if there is—
 - (i) a contravention of this Ordinance, or of a requirement, direction, condition or order; or
 - (ii) a failure to comply with a requirement, direction, condition or order;
 - (b) where this Ordinance empowers a person to make subsidiary legislation that will contain such a provision.
- (2) For the purposes of the provision, a person is a responsible person of a company or non-Hong Kong company if the person—
- (a) is an officer or shadow director of the company or non-Hong Kong company; and
 - (b) authorizes, ~~or~~ permits, or, participates in, ~~or fails to take all reasonable steps to prevent,~~⁶ the contravention or failure.
- (3) For the purposes of the provision, a person is also a responsible person of a company or non-Hong Kong company if—
- (a) the person is an officer or shadow director of a body corporate that is an officer or shadow director of the company or non-Hong Kong company;
 - (b) the body corporate authorizes, ~~or~~ permits, or, participates in, ~~or fails to take all reasonable steps to prevent,~~⁷ the contravention or failure; and
 - (c) the person authorizes, ~~or~~ permits, or, participates in, ~~or fails to take all reasonable steps to prevent,~~⁸ the contravention or failure.

⁶ Item 2 / 第 2 項

⁷ Item 2 / 第 2 項

⁸ Item 2 / 第 2 項

5. Dormant company

- (1) If a qualified private company passes a special resolution specified in subsection (2), and the resolution is delivered to the Registrar for registration, the company is a dormant company for the purposes of Parts 9, 10 and 12 as from the date mentioned in subsection (2)(a) as declared by the resolution.
- (2) The special resolution specified for the purposes of subsection (1) is one—
 - (a) declaring that the qualified private company will become dormant as from—
 - (i) the date of delivery of that resolution to the Registrar; or
 - (ii) any later date that is specified in that resolution; and
 - (b) authorizing the directors to deliver that resolution to the Registrar for registration.
- (3) If—
 - (a) before the repeal of section 344A of the predecessor Ordinance by section 900, a company passed a special resolution under subsection (1) of that section, and the resolution has not been delivered to the Registrar; and
 - (b) the resolution is delivered to the Registrar for registration after the repeal,the company is also a dormant company for the purposes of Parts 9, 10 and 12 as from the date of delivery of the resolution to the Registrar or as from a later date as is specified in the resolution.
- (4) If, immediately before the repeal of section 344A of the predecessor Ordinance by section 900, a company was a dormant company for the purposes of that section, the company continues to be a dormant company for the purposes of Parts 9, 10 and 12 as from the commencement date of this section.
- (5) A company that is a dormant company for the purposes of Parts 9, 10 and 12 ceases to be such dormant company if—
 - (a) the company passes a special resolution declaring that the company intends to enter into an accounting transaction, and the resolution is delivered to the Registrar for registration; or
 - (b) there is an accounting transaction in relation to the company.
- (6) In this section—

qualified private company (合資格私人公司) means a private company that is not a company specified in subsection (7).
- (7) A company specified for the purposes of the definition of **qualified private company** in subsection (6) is—
 - (a) an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155);
 - (b) an insurer as defined by section 2(1) and (2) of the Insurance Companies Ordinance (Cap. 41);
 - (c) a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity as defined by section 1 of Part 1 of Schedule 1 to that Ordinance;
 - (d) an associated entity, within the meaning of Part VI of the Securities and Futures Ordinance (Cap. 571), of a corporation mentioned in paragraph (c);
 - (e) an approved trustee as defined by section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
 - ~~(f) a company registered as a trust company under Part VIII of the Trustee Ordinance (Cap. 29);~~⁹
 - (g) a company having a subsidiary that falls within paragraph (a), (b), (c), (d) ~~or~~ (e) ~~or~~ (f)¹⁰; or
 - (h) a company that fell within paragraph (a), (b), (c), (d), (e), ~~(f)~~⁷ or (g) at any time during the 5 years immediately before the special resolution is passed.

⁹ Item 3 / 第 3 項

¹⁰ Item 3 / 第 3 項

Companies Bill
《公司條例草案》

(8) The Financial Secretary may, by notice published in the Gazette, amend subsection (7).

15. Parent undertaking, ~~parent company~~¹¹ and subsidiary undertaking

A reference in this Ordinance to a parent undertaking, ~~parent company~~¹² or subsidiary undertaking is to be construed in accordance with Schedule 1.

¹¹ Item 4 / 第 4 項

¹² Item 4 / 第 4 項

Schedule 1

1. Interpretation

In this Schedule—

shares (股份)—

- (a) in relation to an undertaking having a share capital, means the allotted shares;
- (b) in relation to an undertaking having capital in a form other than share capital, means the right to share in the capital of the undertaking; or
- (c) in relation to an undertaking not having any capital, means—
 - (i) the interest giving a right to share in the profits, or giving rise to a¹³ liability to contribute to the losses, of the undertaking; or
 - (ii) the interest giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of its being wound up;¹⁴

undertaking (企業) means—

(a) a body corporate;

(b) a partnership; or

(c) an unincorporated association carrying on a trade or business, whether for profit or not.¹⁴

¹³ Item 5(I) / 第 5(I)項

¹⁴ Item 5(II) / 第 5(II)項

2. Parent undertaking

- (1) For the purposes of this Ordinance, an undertaking is a parent undertaking of another undertaking if—
 - (a) where both undertakings are bodies corporate, it is a holding company of that other undertaking; or
 - (b) in any other case—
 - (i) it holds a majority of the voting rights in that other undertaking;
 - (ii) it is a member of that other undertaking and has the right to appoint or remove a majority of that other undertaking's board of directors; or
 - (iii) it is a member of that other undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in that other undertaking.
- (2) For the purposes of this Ordinance, an undertaking is also a parent undertaking of another undertaking if it has the right to exercise a dominant influence over that other undertaking by virtue of—
 - (a) the provisions contained in ~~the any constitution, or an equivalent constitutional document, of document constituting or regulating~~¹⁵ that other undertaking; or
 - (b) a contract in writing that—
 - (i) is of a kind authorized by ~~the any constitution, or an equivalent constitutional document, of document constituting or regulating~~¹⁶ that other undertaking; and
 - (ii) is permitted by the law under which that other undertaking is established.
- (3) In subsection (1)(b), a reference to the voting rights in an undertaking is—
 - (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares; or
 - (b) in the case of an undertaking not having a share capital—
 - (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights, a reference to the rights given to the members to vote at the general meetings on all matters or on substantially all matters; or
 - (ii) if the undertaking is not required to hold such general meetings, a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.
- (4) For the purposes of subsection (1)(b), an undertaking is a member of another undertaking if—
 - (a) a person acting on behalf of it, or of any of its subsidiary undertakings, holds shares in that other undertaking; or
 - (b) any of its subsidiary undertakings is a member of that other undertaking.
- (5) For the purposes of subsection (1)(b)(ii), a reference to the right to appoint or remove a majority of a board of directors is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the directors on all matters or on substantially all matters.
- (6) For the purposes of subsection (5)—
 - (a) in determining whether an undertaking has the right to appoint or remove a director, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and
 - (b) an undertaking has the right to appoint a director if—
 - (i) it necessarily follows from a person's appointment as a director of the undertaking that the person is appointed as a director of that other undertaking; or
 - (ii) the directorship is held by the undertaking itself.

¹⁵ Item 6 / 第 6 項

¹⁶ Item 6 / 第 6 項

- (7) For the purposes of subsection (2), an undertaking does not have any right to exercise a dominant influence over another undertaking unless—
- (a) it has a right to give directions with respect to the operating and financial policies of that other undertaking; and
 - (b) that other undertaking's directors are, or a majority of them is, obliged to comply with the directions, whether or not the directions are for that other undertaking's benefit.

~~4. Parent company~~

~~For the purposes of this Ordinance, a parent company is a parent undertaking that is a company.~~¹⁷