

COMPANIES (AMENDMENT) BILL 2018

2018年公司(修訂)條例草案

2018.05.25

Financial Services and the Treasury Bureau
財經事務及庫務局

Background 背景

- ◆ **The new Companies Ordinance (Cap. 622) (“new CO”)**
新《公司條例》(第622章) (“新條例”)
 - ▶ **commenced operation in March 2014 and smooth implementation**
自2014年3月開始實施，運作順暢
 - ▶ **provides modern statutory framework for incorporation and operation of companies in Hong Kong**
為在香港成立和營運的公司提供現代化的法律框架
 - ▶ **achieved policy objectives to enhance corporate governance, ensure better regulation, facilitate business and modernise the law**
達到加強企業管治、確保妥善規管、方便營商、以及使相關法例現代化的政策目標

Background 背景

Based on operational experience and feedbacks from various stakeholders
根據運作經驗和各持份者的意見



Identified provisions that could be amended to improve clarity and operation of the new CO, and further facilitate business
可修訂若干條文，使新條例更清晰和易於實施，並使在香港營商更為方便



Companies (Amendment) Bill 2018 (“the Bill”)
2018年公司(修訂)條例草案 (“條例草案”)

The Bill 條例草案

A technical legislative amendment exercise to

技術性的修例建議以

(A)
incorporate new developments after the commencement of the new CO; and
為新條例實施後的新發展作出修訂; 以及

(B)
clarify policy intent or remove ambiguities and inconsistencies
釐清政策原意或刪除不清晰或不一致之處

Key Amendments 主要修訂

(A)

Amendments to incorporate new developments
為新發展作出的修訂

- (1) Reporting exemption – expanding the scope for simplified reporting
財務報告豁免措施 - 擴大簡明財務報表的涵蓋範圍
- (2) Updating the accounting-related provisions in Part 9 of, and Schedule 1 to, the new CO
更新新條例第9部及附表1的會計相關條文

Amendments to incorporate new developments 為新發展作出的修訂

◆ (A1) Expanding the scope for simplified reporting 財務報告豁免措施 - 擴大簡明財務報表的涵蓋範圍

▶ Existing reporting exemption 現時的豁免措施

Holding company of eligible group of companies which meet specified size criteria can prepare simplified financial statements and is subject to less stringent requirements for preparation of auditors' reports and directors' reports.

合資格公司集團的控權公司，可擬備簡明財務報表，在擬備核數師報告和董事報告時須符合的規定也較為寬鬆。

Amendments to incorporate new developments 為新發展作出的修訂

◆ (A1) Expanding the scope for simplified reporting

財務報告豁免措施 - 擴大簡明財務報表的涵蓋範圍

- ▶ To provide more flexibility to SMEs to reduce compliance costs, we propose to allow the holding companies of two other types of corporate groups to benefit from such reporting exemption

(providing both the holding company and all subsidiaries meet the size criteria)

為給予中小企更大彈性以減低遵規成本，我們建議讓另外兩類法團集團的控權公司也可受惠於財務報告豁免措施

(惟控權公司和旗下所有附屬公司均須符合規模準則)

Amendments to incorporate new developments 為新發展作出的修訂

- ▶ Proposed expansion of scope for simplified reporting
建議擴大簡明財務報表的涵蓋範圍

“mixed
groups”
“混合集團”

Holding companies of corporate groups comprising small private companies or eligible private companies and small guarantee companies

由小型私人公司或合資格私人公司和小型擔保公司組成的法團集團的控權公司

non-HK
subsidiaries
屬非香港公司
的附屬公司

Holding companies of groups of small private companies, eligible private companies and small guarantee companies or the mixed groups with non-Hong Kong subsidiaries

由小型私人公司、合資格私人公司或小型擔保公司組成的法團集團，或混合集團，並擁有屬非香港公司的附屬公司的控權公司

Amendments to incorporate new developments 為新發展作出的修訂

- ◆ (A2) Updating the accounting-related provisions in Part 9 of, and Schedule 1 to, the new CO
更新新條例第9部及附表1的會計相關條文
 - ▶ To reflect the latest accounting standards so as to avoid inconsistencies between the new CO and the latest accounting standards
反映最新的會計準則，避免新條例與最新會計準則出現不一致
 - ▶ Update the definitions of “holding company” and “parent undertaking”
更新有關“控權公司”及“母企業”的定義
 - ▶ Establish control as the basis for determining whether an entity is a “subsidiary” of the “parent undertaking” and define the principle of control
把控制權確立為決定某實體是否“母企業”的“附屬公司”時的準則，並界定控制權的原則

Key Amendments 主要修訂

(B)

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- (1) Display of company name for non-Hong Kong companies
非香港公司展示公司名稱
- (2) Alignment of penalty provisions relating to financial statements and reports
劃一財務報表及報告的罰則條文
- (3) Streamlining and clarifying provisions to facilitate compliance
精簡和釐清條文以助遵規

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- ◆ (B1) Display of company name for non-Hong Kong companies
非香港公司展示公司名稱
 - ▶ Empower the FS to make regulations to provide for the requirements on the display of company names and the disclosure of liability status of non-Hong Kong companies
賦權財政司司長就非香港公司須展示公司名稱和披露公司是否屬有限公司訂立規例
 - ▶ Align the obligations of non-Hong Kong companies with those of local companies in the display of company names
劃一非香港公司和本地公司在展示公司名稱方面的責任

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

◆ (B2) Alignment of penalty provisions relating to financial statements and reports

劃一財務報表及報告的罰則條文

- ▶ At present, the penalty level for an offence relating to the revision of financial statements and reports is lower than the penalty for a corresponding offence relating to the original financial statements and report

現時，就修改財務報表及報告相關罪行所訂的罰則水平，低於就原財務報表及報告相關罪行所訂的罰則水平。

- ▶ To remove the inconsistencies and align the penalty levels for the relevant offences

劃一相關罪行的罰則水平，刪除不一致的情況

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- ◆ (B3) Streamlining and clarifying provisions to facilitate compliance, including the following amendments - 精簡和釐清條文以助遵規，包括以下修訂：
 - ▶ To provide an option for a holding company which is also a wholly owned subsidiary to prepare consolidated financial statements 讓屬全資附屬公司的控權公司可選擇擬備綜合財務報表
 - ▶ For the requirement for a holding company to list the names of the directors of its subsidiaries in the directors' report, to provide an option for a holding company to provide such information on its website, or by keeping such a list at its registered office and making it available for inspection 就有關控權公司須在董事報告載列其附屬企業的董事的姓名的規定，讓控權公司可選擇在其網站提供有關資料，或在其註冊辦事處備存載列有關名冊以供查閱

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

◆ (B3) Streamlining and clarifying provisions to facilitate compliance, including the following amendments -
精簡和釐清條文以助遵規，包括以下修訂：

- ▶ For a group of eligible private companies, the adoption of simplified reporting should require a resolution by members of the holding company only

就合資格私人公司集團而言，只要控權公司的成員通過決議，該控權公司可採用簡明財務報表

- ▶ To allow a company's articles to be in electronic form; and if a company has both an English name and a Chinese name, both names must be stated in the articles

容許公司章程細則採用電子形式，以及如公司兼有中文名稱和英文名稱，其章程細則須兼述明該兩個名稱

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- ◆ (B3) Streamlining and clarifying provisions to facilitate compliance, including the following amendments -
精簡和釐清條文以助遵規，包括以下修訂：
 - ▶ To provide for an exemption from general registration requirement for alteration of articles if such alteration is in respect of a change of company name
就公司名稱更改而對章程細則作出的修改，可獲豁免有關修改章程細則的一般註冊規定
 - ▶ To allow a company with both an English name and a Chinese name to display either its English name and a Chinese name
容許兼有中文名稱及英文名稱的公司可展示其中文名稱或英文名稱

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- ◆ (B3) Streamlining and clarifying provisions to facilitate compliance, including the following amendments -
精簡和釐清條文以助遵規，包括以下修訂：

- ▶ To clarify that the statement of capital should report the capital position immediately after the relevant change; and the obligation to give particulars of class rights in the statement of capital only arises if there are different classes of shares

訂明股本說明須報告緊接有關更改後的股本狀況，以及釐清只有在股本分為不同類別時，才須在股本說明內述明類別權利詳情

- ▶ If all holders of shares or members in a class agree to a variation of the class rights, the variation will have effect as agreed

如某類別的所有股份持有人或成員同意更改該類別的權利，則有關更改可如他們所同意具有效力

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- ◆ (B3) Streamlining and clarifying provisions to facilitate compliance, including the following amendments - 精簡和釐清條文以助遵規，包括以下修訂：
 - ▶ To amend the small payments exception to the restrictions on payments for loss of office as director
修訂有關就限制董事失去職位的付款而設的小額付款例外情況的條文
 - ▶ To make it clear that the court-free procedure for horizontal amalgamation is also available to subsidiaries of a holding company incorporated outside Hong Kong so long as the merging companies are Hong Kong companies
訂明只要合併的公司為香港公司，在香港以外地方成立為法團的控權公司的附屬公司亦可藉不經法院的程序橫向合併

Amendments to clarify policy intent or remove ambiguities and inconsistencies

為釐清政策原意或刪除不清晰或不一致之處的修訂

- ◆ (B3) Streamlining and clarifying provisions to facilitate compliance, including the following amendments - 精簡和釐清條文以助遵規，包括以下修訂：
 - ▶ To clarify provisions in respect of company record-keeping and company administration and procedure including matters relating to keeping of records of directors to include resolutions passed by directors without a meeting
釐清關於公司備存紀錄和公司管理及議事程序的條文，包括有關備存的董事紀錄須包括董事在不舉行會議下通過的決議的事宜
 - ▶ To alter the conditions for granting applications for administrative restoration of companies; and expressly provide for Government's power to dispose of any property or right vested as *bona vacantia* under the predecessor Companies Ordinance
修改有關批准以行政方式恢復公司註冊的申請的條件，和明文訂明政府處置根據前身《公司條例》屬無主財物並歸屬政府的財產的權力

Other textual and technical amendments

其他文本及技術修訂

- ◆ For ensuring consistency in the terminology used in different provisions of the new CO
為確保新條例不同條文的用語一致
 - ▶ e.g. the Chinese rendition of “general meeting” should be “成員大會” instead of “周年大會”
“general meeting”一詞正確中文對應詞應為“成員大會”而非“周年大會”

- ◆ Textual amendments
文本修訂
 - ▶ e.g. “Roman script” should be replaced with “Latin alphabet”
把“羅馬字”改為“拉丁字母”

Public Consultation 公眾諮詢

- ◆ LegCo Panel on Financial Affairs supported the proposal at its meeting in January 2018
立法會財經事務委員會在2018年1月的會議上支持有關建議
- ◆ Consulted relevant stakeholders (including professional bodies and chambers of commerce) and the Standing Committee on Company Law Reform in 2016, all were generally supportive
在2016年諮詢相關持份者(包括專業團體和商會等)及公司法改革常務委員會，他們大致支持建議

Thank you!
謝謝!