

# 立法會 *Legislative Council*

LC Paper No. CB(1)1005/17-18(02)

Ref: CB1/BC/7/17

## **Bills Committee on Companies (Amendment) Bill 2018**

### **Background brief**

#### **Purpose**

This paper provides background information on the Companies (Amendment) Bill 2018 ("the Bill"). It also summarizes the views and concerns expressed by members when the Panel on Financial Affairs ("FA Panel") was consulted on the legislative proposals.

#### **Background**

2. The new Companies Ordinance (Cap. 622) ("new CO") provides for a modern statutory framework for the incorporation and operation of companies in Hong Kong. A number of measures have been introduced under the new CO to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of small and medium-sized enterprises. The new CO was enacted in July 2012<sup>1</sup> and most provisions of the new CO and relevant items of subsidiary legislation commenced operation on 3 March 2014.<sup>2</sup>

3. Based on the operational experience since the commencement of the new CO, as well as the feedback from various stakeholders, the Administration has identified certain provisions of the new CO that should be amended to

---

<sup>1</sup> The Companies Bill was passed by the Legislative Council ("LegCo") at the meeting of 12 July 2012. The Report of the Bills Committee is hyperlinked in the Appendix. LegCo also enacted 14 items of subsidiary legislation under the new Companies Ordinance (Cap. 622) ("new CO") in the 2012-2013 LegCo session. The reports of the Subcommittee on Subsidiary Legislation Made under the New Companies Ordinance are hyperlinked in the Appendix.

<sup>2</sup> Relevant provisions in Parts 2, 12 and 16 of and Schedules 2, 6 and 11 to the new CO regarding the new inspection arrangement of usual residential addresses of company directors and full identification numbers of individuals, and section 908 of and Schedule 8 to the new CO concerning uncertificated securities are not yet in operation.

incorporate new developments, improve the clarity and operation of the new CO and to further facilitate business in Hong Kong.

## **The Companies (Amendment) Bill 2018**

4. The Bill was gazetted on 6 April 2018, and received its First Reading at the Legislative Council ("LegCo") meeting of 25 April 2018. The Bill seeks to amend the new CO and eight items of its subsidiary legislation to (a) improve the operation of the accounts provisions, (b) expand the types of companies within the reporting exemption, and (c) provide for miscellaneous and related matters in relation to various administrative, procedural and technical requirements regulating companies and non-Hong Kong companies. The key aspects of the proposals are summarized in paragraphs 5 to 7 below.

### *Improving the operation of the accounts provisions*

5. The Bill proposes to streamline the operation of certain accounting and financial reporting requirements. Some of the proposed amendments are as follows:

- (a) providing an option for a holding company which is also a wholly owned subsidiary to prepare consolidated financial statements instead of its own financial statements (clause 42 of the Bill); and
- (b) in addition to the directors' report, providing alternative means for a holding company to list the names of the directors of all of its subsidiary undertakings by adding an option of allowing a holding company to provide such information on its website, or by keeping a list at the holding company's registered office and making it available for inspection (clause 47 of the Bill).

### *Expanding the types of companies within the reporting exemption*

6. The new CO allows simplified accounting and financial reporting of corporate groups if they fall within the reporting exemption.<sup>3</sup> The Bill

---

<sup>3</sup> A holding company of a group of companies qualifies for the reporting exemption if it satisfies the size criteria and each company in the group qualifies as a small private company, an eligible private company or a small guarantee company, as the case may be. Under the reporting exemption, the holding company of a group of companies is entitled to prepare simplified financial statements in accordance with the "Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard" issued by the Hong Kong Institute of Certified Public Accountants, and is subject to less stringent requirements for the preparation of auditors' reports and directors' reports.

(clauses 33 to 38, and 86) proposes to allow the holding companies of two other types of corporate groups to benefit from the reporting exemption, namely:

- (a) holding companies of corporate groups comprising small private companies or eligible private companies or both on the one hand; and small guarantee companies on the other (mixed groups), provided that both the holding company and all the subsidiary companies meet the size criteria; and
- (b) holding companies of groups of small private companies, eligible private companies, small guarantee companies, or the mixed groups described in paragraph (a) above, with non-Hong Kong subsidiaries, provided that both the holding company and all of its subsidiary companies, including non-Hong Kong subsidiaries, meet the size criteria.

#### *Other amendments*

7. The Bill introduces a number of miscellaneous and related amendments to the new CO and relevant items of subsidiary legislation in relation to various administrative, procedural and technical requirements regulating companies and non-Hong Kong companies. The proposed amendments include allowing a company's articles of association to be in electronic form (clause 7 of the Bill), aligning the requirements for non-Hong Kong companies with those for Hong Kong companies on the disclosure of names and empowering the Financial Secretary 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 (clauses 79 and 81 of the Bill).

8. Details of the main provisions of the Bill are set out in paragraph 14 of the LegCo Brief (File Ref: CO/2/2C(2018) dated 4 April 2018), and paragraphs 5 to 11 of the Legal Service Division Report on the Bill (LC Paper No. LS53/17-18). The Bill, if passed, would come into operation on 1 February 2019, except for two provisions<sup>4</sup> that would come into operation on a day to be appointed by the Secretary for Financial Services and Treasury by notice published in the Gazette.

---

<sup>4</sup> The two provisions seek to repeal section 792 of and item 7 of Schedule 7 to the new CO which relate to the disclosure requirements on non-Hong Kong companies and the related offence under the compounding scheme.

## **Major views and concerns expressed by Members**

9. FA Panel was briefed by the Administration on the proposed amendments to certain provisions of the new CO at the meeting on 5 January 2018. The views and concerns expressed by members at the meeting are summarized in the ensuing paragraphs.

10. Panel members enquired if the proposed amendments would address all the concerns and technical issues raised by the stakeholders since the commencement of the new CO.

11. The Administration advised that the proposed legislative amendments had been formulated in light of the operational experience since the commencement of the new CO and had taken into account feedback from various stakeholders. Besides, the Administration had consulted relevant stakeholders including the Hong Kong Institute of Certified Public Accountants on the proposed amendments. The stakeholders were generally supportive of, or had raised no objection to the proposed amendments.

12. Some Panel members sought clarification on the proposed amendments to the technical accounting and reporting provisions under the new CO. The Administration explained that under the proposed amendments, a holding company could provide the names of the directors of all of its subsidiaries by any one of the following means: (a) in the directors' report of the holding company; (b) on the holding company's website; or (c) by keeping a list at the holding company's registered office and making it available for inspection by members of the company.

## **Latest development**

13. At the House Committee meeting on 27 April 2018, Members agreed to form a Bills Committee to study the Bill.

## **Relevant papers**

14. A list of relevant papers is set out in the **Appendix**.

## List of relevant papers

Date	Event	Paper
12 July 2012	The Legislative Council passed the Companies Bill	<a href="#">Hansard</a> <a href="#">The Bill passed</a> <a href="#">Report of the Bills Committee</a> (LC Paper No. CB(1)2221/11-12)
6 February 2013	Subcommittee on Subsidiary Legislation Made under the New Companies Ordinance	<a href="#">First Report</a> (LC Paper No. CB(1)727/12-13) <a href="#">Second Report</a> (LC Paper No. CB(1)949/12-13) <a href="#">Third Report</a> (LC Paper No. CB(1)1469/12-13)
5 January 2018	Meeting of the FA Panel	<a href="#">Administration's paper</a> (LC Paper No. CB(1)401/17-18(06)) <a href="#">Minutes</a> (paragraphs 13-17) (LC Paper No. CB(1)727/17-18)
25 April 2018	The Companies (Amendment) Bill 2018 was introduced into the Legislative Council	<a href="#">The Bill</a> <a href="#">Legislative Council Brief</a> (File Ref: CO/2/2C(2018)) <a href="#">Legal Service Division Report</a> (LC Paper No. LS53/17-18)