



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2869 4195)

14 June 2018

Miss Jeanne FUNG  
AS for Financial Services & the Treasury (Financial  
Services)(6)1  
Financial Services and the Treasury Bureau  
Financial Services Branch  
15/F, Queensway Government Offices  
66 Queensway  
Hong Kong

Dear Miss FUNG,

**Companies (Amendment) Bill 2018**

We are scrutinizing the above Bill with a view to advising Members.

Please find attached a schedule listing our observations on the legal and drafting aspects of the English text of the above Bill. We would be grateful if you could let us have your response in bilingual form as soon as possible.

Yours sincerely,

(Wendy KAN)  
Assistant Legal Adviser

c.c. DoJ (Attn: Mr Alan CHONG and Mr Jonathan LUK) (By Fax: 3918 4613)  
Clerk to Bills Committee  
LA  
SALA3

## **Schedule**

### **Part I: Legal Issues**

#### Clause 33 of the Bill

1. Please explain the reason(s) for providing in the proposed new section 359(6) of the Companies Ordinance (Cap. 622) that the proposed amendments made to section 359(2)(b) and (3)(b) of Cap. 622, and the proposed new section 359(3A)(b)(ii) and (5) of Cap. 622, apply only in relation to a financial year beginning on or after the commencement date of section 33 of the Bill (if passed), as distinct from the arrangement for the other provisions contained in the proposed new section 359(3A) of Cap. 622.

#### Clause 34 of the Bill

2. For the purposes of section 359(2)(c)(ii) of Cap. 622, clause 34 of the Bill proposes to replace the current three different sets of conditions prescribed in section 360(2)(a), (b) and (c) of Cap. 622 with only one set of conditions set out in the proposed section 360(2) of Cap. 622. Please clarify the reason(s) for proposing such a change.

#### Clause 64 of the Bill

3. It is noted that the proposed section 619(4)(b) of Cap. 622 deals with a specified record that is a copy of a written resolution of members, minutes of proceedings of a general meeting and a written record of a sole member of a company which came into existence before a prescribed date. Under the proposed section 619(4)(b)(i) of Cap. 622, a reference is made to section 153C(3) of the predecessor Ordinance (as defined in Cap. 622), which seemed to deal with written records of decisions of a sole director of a private company. Please clarify.

#### Clause 81 of the Bill

4. Under section 792 of Cap. 622, if a non-Hong Kong company contravenes any of the relevant disclosure requirements, the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence. It is noted that clause 81 of the Bill proposes to

add new sections 805A and 805B to Cap. 622 for empowering the Financial Secretary to make regulations for non-Hong Kong companies relating to disclosure requirements and related offences and that pursuant to clause 79 of the Bill, section 792 of Cap. 622 is proposed to be repealed. Please consider whether the criminal liability to be imposed by regulations to be made under the proposed new section 805A of Cap. 622 should, in addition to those contained in the proposed new section 805B of Cap. 622, be extended to include every agent of a non-Hong Kong company who authorizes or permits the contravention as in section 792 of Cap. 622.

#### Clause 91 of the Bill

5. Clause 91 of the Bill proposes to amend the definition of "registered name" under section 2(1) of the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) so as to allow a company which has both an English name and a Chinese name, to display at places such as its registered office and to state in its website and documents such as its business letters, only its English name or Chinese name in accordance with sections 3 and 4 of Cap. 622B. Clause 8 of the Bill, on the other hand, proposes to amend section 81 of Cap. 622 to the effect that if a company has both an English name and a Chinese name, its articles of association must state both the English name and the Chinese name. Please explain the reason(s) for providing such different requirements regarding company names.

#### Clause 92 of the Bill

6. Please clarify the reason(s) for providing that the proposed new section 4A of Cap. 622B only applies to a limited company, instead of a company, as in section 3 and 4 of Cap. 622B.

### **Part II: Drafting Issues**

#### Clause 12 of the Bill

7. It appears that the offence under section 171(4) of Cap. 622 does not cover a contravention of the requirements under section 171(2) of Cap. 622, as section 171(1) of Cap. 622 does not require the notice to be delivered to the Registrar of Companies to comply with section 171(2) of Cap. 622. If it is intended that such a

contravention should be an offence under section 171(4) of Cap. 622, please consider to make appropriate amendments, as similar to, for example, section 142(1) and (3) and section 173(3) of Cap. 622.

Clause 85 of the Bill

8. It is provided, under the proposed new section 357(4)(c) of Cap. 622, that in Part 9 of Cap. 622, a reference to a parent undertaking or subsidiary undertaking is to be construed in accordance with Schedule 1 to Cap. 622. It is, however, noted that under section 4(1) and (2) of Schedule 1 to Cap. 622, a definition of a subsidiary undertaking is provided for the purposes of Cap. 622, but not Part 9 of Cap. 622. Should amendments be made to section 4(1) and (2) of Schedule 1 to Cap. 622?

Clause 91 of the Bill

9. Under the proposed section 2(1) of Cap. 622B, "registered name" is defined, in relation to a company, to mean the English name or the Chinese name, if applicable, by which the company is registered under Cap. 622. As a company may only have an English name or a Chinese name, or may have both an English name and Chinese name, please consider, for the sake of clarity, to amend the phrase "the English name or the Chinese name, if applicable" in order to ensure that all the above three scenarios are covered under the definition of "registered name".