

Bills Committee on Companies (Amendment) Bill 2018 (“the Bill”)

Responses to written submissions from various organisations to the Bills Committee

	<u>Views</u>	<u>Responses</u>
A. General comments on the Bill		
1	All submissions generally supported the proposed amendments in the Bill which could reduce compliance costs for small and medium enterprises (“SMEs”) and further facilitate business in Hong Kong.	We are pleased to note the views in the submissions, as well as the support expressed at the deputation session.
B. Reporting exemption – expanding the scope for simplified reporting		
2	All submissions generally supported the proposal of allowing the holding companies of two other types of corporate groups to benefit from the reporting exemption, namely holding companies of mixed groups and holding companies of group companies which have non-Hong Kong subsidiaries.	We are pleased to note the views in the submissions, as well as the support expressed at the deputation session.
3	The current size criteria for determining whether a group company is qualified for the reporting exemption should be adjusted having regard to the actual economic environment. <i>[The Association of Women Accountants (Hong Kong) Limited (“AWAHK”), Edwin Yeung & Company (CPA) Limited (“Edwin Yeung”) and the Society of Chinese Accountants & Auditors (“SCAA”)]</i>	The current size criteria in qualifying for reporting exemption was formulated during the exercise to rewrite the predecessor Companies Ordinance (Cap. 32)(“predecessor CO”). The formulation was subsequently supported by the Bills Committee on Companies Bill and endorsed by the Legislative Council with the enactment of the Companies Ordinance (Cap. 622)(“CO”). While the size criteria issue is <i>not</i> part of the current amendment exercise, we will keep the criteria under review.

	<u>Views</u>	<u>Responses</u>
	<p>Supportive of the current threshold of the size criteria in qualifying for reporting exemption which would facilitate business and reducing SMEs' cost of doing business in Hong Kong.</p> <p><i>[Kenny Tam & Co.]</i></p>	
C. Display of company name		
4	<p>Supportive of the amendment to allow a company to display either its English name or Chinese name.</p> <p><i>[AWAHK, Baker Tilly Hong Kong Limited, Edwin Yeung and SCAA]</i></p>	<p>We are pleased to note the views in the submissions, as well as the support expressed at the deputation session.</p>
D. Requirements to disclose the names of directors of subsidiaries of a company		
5	<p>Supportive of the amendment to provide an alternative way of complying with the disclosure requirement, i.e. by adding an option of allowing a holding company to provide such information on its website, or by keeping a list of the names of the directors of all of its subsidiary undertakings at the holding company's registered office and making it available for inspection.</p> <p><i>[The Chinese Manufacturer' Association of Hong Kong]</i></p>	<p>We are pleased to note the views in the submissions, as well as the support expressed at the deputation session.</p>

	<u>Views</u>	<u>Responses</u>
6	<p>Clarification is sought on the following –</p> <p>(a) whether overseas incorporated companies which are listed on the Hong Kong Stock Exchange are required to comply with the requirements; and</p> <p>(b) specific needs for imposing such requirements which were not in the predecessor CO or company laws of other common law jurisdictions.</p> <p><i>[Hong Kong Institute of Chartered Secretaries]</i></p>	<p>Section 390 of the CO requires a holding company to list the names of the directors of its subsidiary undertakings in the directors' report. We propose to allow a holding company to provide such information on its website, or by keeping a list of the names of the directors of all of its subsidiary undertakings at the holding company's registered office and making it available for inspection. The policy intention for this proposed amendment is to strike a balance between maintaining transparency and reducing compliance cost.</p> <p>Section 390 of the CO is applicable to directors' reports of companies incorporated in Hong Kong. As for companies incorporated overseas which are listed on the Hong Kong Stock Exchange, the Hong Kong Exchanges and Clearing Limited would consider whether the Listing Rules should be amended accordingly after taking into account all relevant factors.</p>
E. Penalty provisions relating to financial statements and reports		
7	<p>The present penalty of criminal offence for delay in presentation of financial statements is excessive. Imposing criminal offence on directors for minor offences beyond their ability are unreasonable and may unfairly penalize the innocents when there may be reasons or hardships obtaining the documents necessary for completion of the audit work in the time period specified in the CO.</p> <p><i>[Edwin Yeung and SCAA]</i></p>	<p>If there is a delay in the preparation of the financial statements, an offence is committed only if a director has failed to take all reasonable steps to secure compliance with the requirements under section 379 of the CO or if the director willfully fails to take all reasonable steps to secure compliance. A defence is available under section 379(6) of the CO to a director who is charged with an offence for failure to take all reasonable steps to secure compliance if it can be established that the director had reasonable grounds to believe, and did believe, that a competent and reliable person was</p>

	<u>Views</u>	<u>Responses</u>
		charged with the duty of ensuring that the requirements were complied with and was in a position to discharge that duty.

**Financial Services and the Treasury Bureau
17 August 2018**