

Bills Committee on Companies (Amendment) Bill 2018

**The Administration's responses to issues raised
by the Assistant Legal Adviser**

This paper sets out the Administration's responses to the issues concerning the Companies (Amendment) Bill 2018 ("the Bill") as raised in the letter of the Assistant Legal Adviser ("ALA") of the Legislative Council dated 14 June 2018.

Clause 33 of the Bill (Item 1 of ALA's list of issues)

2. The proposed amendments made to sections 359(2)(b) and (3)(b) of the Companies Ordinance (Cap. 622) ("CO") and the proposed new sub-section (3A)(b)(ii) (which are contained in clause 33 of the Bill) are to expand the scope of the reporting exemption to include the holding company of a group of companies with members that are not incorporated in Hong Kong. The other provisions contained in the proposed new sub-section (3A) are to expand the scope of the reporting exemption to include the holding company of a mixed group.

3. The proposed new section 359(6) provides that the proposed amendments to section 359(2)(b) and (3)(b) and the proposed new sub-section (3A)(b)(ii) will apply only in relation to a financial year beginning on or after the commencement date of the relevant sections.

4. On the other hand, in respect of a mixed group under the other provisions contained in the proposed new sub-section (3A), the proposed new section 366A(1) under clause 38 of the Bill provides, among other things, that if the size criteria are met in the first financial year of the holding company after the commencement of the new provisions or in the immediately preceding financial year of the holding company, the group is qualified as a mixed group (for the purposes of qualifying for the reporting exemption) for that first financial year. The intention is that

the relevant new provisions will apply only in relation to a financial year beginning on or after the commencement date of the relevant sections. This is in line with the provision in the proposed new section 359(6) as mentioned in paragraph 3 above.

Clause 34 of the Bill (Item 2 of ALA's list of issues)

5. The existing section 360(2) of the CO sets out the conditions for the purposes of section 359(2)(c)(ii). Sub-paragraphs (a) to (c) of section 360(2) each cover a different reason why the group of companies is not qualified as a group of small private companies. However, the intention of the amendment under clause 34 of the Bill is that for whatever reason that the group is not qualified as a group of small private companies, the only requirement is to have approval by members holding at least 75% of the voting rights in the holding company (and no member objecting). Therefore, section 360(2) could be simplified by merging sub-paragraphs (a) to (c) together. The proposed section 360(2) is modelled on the existing section 360(1).

Clause 64 of the Bill (Item 3 of ALA's list of issues)

6. We agree that the reference to section 153C(3) is redundant and should be removed. We will introduce a Committee Stage Amendment ("CSA") accordingly.

Clause 81 of the Bill (Item 4 of ALA's list of issues)

7. It is the policy intent that the regulations to be made under the new proposed section 805A will impose criminal liability on every agent of the company who authorizes or permits the contravention, similar to section 792(6). The manner of compliance or contravention and the relevant details will be set out in the proposed regulations to be made.

Clause 91 of the Bill (Item 5 of ALA's list of issues)

8. The definition of "registered name" in Cap. 622B is for the

purpose of compliance with the display requirements for company names. For the purposes of compliance in ensuring that a company is properly identified, we consider that it is sufficient for a company to display or state either its English name or its Chinese name in the manner described in Cap. 622B.

9. On the other hand, the articles of association (“Articles”) of a company is an important document. It is a company’s constitution and a statutory contract between members themselves and between individual members and the company. This is made clear by section 86 of the CO. The Articles are required to be delivered to the Registrar of Companies for registration and are available for inspection by the public. We consider it necessary that the company, if it has an English name and a Chinese name, must state both the English name and the Chinese name in its Articles for public search.

Clause 92 of the Bill (Item 6 of ALA’s list of issues)

10. We will introduce a CSA to delete the word “limited”.

Clause 12 of the Bill (Item 7 of ALA’s list of issues)

11. The notice referred to in section 171(1) must mean the one that complies with section 171(2). Section 171(2) is only to specify what constitutes a notice under section 171(1). Failure to comply with the requirements under section 171(2) leads to contravention of section 171(1). We therefore consider that it is not necessary to make any amendment.

Clause 85 of the Bill (Item 8 of ALA’s list of issues)

12. The definition of "subsidiary undertaking" under section 4(1) and (2) of Schedule 1 of the CO is limited in its scope by virtue of its linkage to the definition of "parent undertaking" under section 2 of that Schedule. That said, for the sake of coherence and tidiness, we will introduce CSAs to section 4(1) and (2) of that Schedule to change "For the purposes of this Ordinance" to "For the purposes of this Schedule and Part 9".

Clause 91 of the Bill (Item 9 of ALA's list of issues)

13. The policy intent behind the amendments under clauses 91 and 92 of the Bill is just to clarify that if a company has both an English name and a Chinese name, the company may display only its English name or Chinese name. Section 3 of Cap. 622B provides that a company must display continuously its registered name in legible characters at certain places. If a company has only an English registered name, it must display the English registered name to comply with section 3. For a company that has only a Chinese registered name, it must display the Chinese registered name to comply with the section. If a company has both an English registered name and a Chinese registered name, even if the company chooses to display only its English registered name but not the Chinese registered name, the requirement under section 3 is still complied with, and vice versa.

14. There is no provision disallowing a company that has both an English registered name and a Chinese registered name to display both its English registered name and Chinese registered name. However, if the company chooses to display its English registered name and intends to display a Chinese name as well, then section 4A(2) comes into play and does not allow the company to display any Chinese name other than its Chinese registered name.

15. The legislative setting does reflect what is stated in paragraph 33 of the Explanatory Memorandum to the Bill. We therefore consider that it is not necessary to make any amendment.

Financial Services and the Treasury Bureau
17 August 2018