

香港特別行政區政府  
財經事務及庫務局  
財經事務科  
香港金鐘道六十六號  
金鐘道政府合署十五樓



LC Paper No. CB(1)1419/17-18(02)  
FINANCIAL SERVICES BRANCH  
FINANCIAL SERVICES AND  
THE TREASURY BUREAU  
GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION  
15TH FLOOR  
QUEENSWAY GOVERNMENT OFFICES  
66 QUEENSWAY  
HONG KONG

電話 TEL.: 2528 6384  
圖文傳真 FAX.: 2869 4195  
本函檔號 OUR REF: CO/2/2C(2018)  
來函檔號 YOUR REF: LS/B/12/17-18

**By fax and email (wkan@legco.gov.hk)**

24 September 2018

Legal Service Division  
(Attn: Ms Wendy KAN)  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Kan,

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

I refer to your letter dated 18 September 2018 seeking further clarification on the captioned Bill (“the Letter”). The Government’s responses are set out below for your information.

#### Clause 34 of the Bill (in relation to item (a) in the Letter)

2. Under section 360(2)(a) of the Companies Ordinance (Cap. 622) (“CO”), if a group of companies is not qualified as a group of small private companies for a financial year because not each company in the group is qualified as a small private company for the financial year, the holding company may fall within the reporting exemption for the financial year if there is 75% approval from members of each company in the group that is not so qualified and there is no member objecting.

3. Under section 360(2)(c), if a group of companies is not qualified as a group of small private companies for a financial year because not each company in the group is qualified as a small private company and the group as a whole cannot satisfy any two of the conditions in section 1(8) of Schedule 3 in the financial year, the holding company may fall within the reporting exemption for the financial year if there is 75% approval from members of each company in the

group that is not so qualified and the holding company and there is no member objecting.

4. After taking into account the views of stakeholders (including the Hong Kong Institute of Certified Public Accountants), we consider that as the members of subsidiary companies are not entitled to receive the holding company's financial statements, they have no legitimate interest in whether or not the holding company takes advantage of the reporting exemption. Thus, it should not be necessary to obtain approval from the members of any subsidiary within the group of companies.

Clause 64 of the Bill (in relation to item (b) in the Letter)

5. Section 116B(7) of the predecessor CO requires a company to cause a record of all written resolutions to be entered into a book kept for that purpose in the same way as minutes of proceedings of a general meeting. Section 116BC(3) of the predecessor CO requires a company to cause a record of all written records of decisions taken by the only member to be entered into a book kept for that purpose in the same way as minutes of proceedings of a general meeting.

6. Section 119A(2) of the predecessor CO requires the company to notify the Registrar of Companies of the place where the record of the minutes of proceedings of a general meeting is kept.

7. Unlike the record of minutes of proceedings of a general meeting, there is no requirement for the company to notify the Registrar of the place where the records under sections 116B & 116BC of the predecessor CO are kept. It is therefore not necessary to include sections 116B and 116BC of the predecessor CO in the proposed section 619(4)(b)(i) under Clause 64 of the Bill.

Clause 64 of the Bill (in relation to item (c) in the Letter)

8. Section 619(4)(b)(ii) of the CO provides that the requirement for a company to notify the Registrar of Companies of the place where the records mentioned in section 618 are kept does not apply if the records kept for the purposes of section 119A of the predecessor CO are, on or after the commencement date of section 619, kept at the same place where they were kept immediately before the commencement date. We are of the view that the expression "the records mentioned in section 618" is just to describe the nature of the documents as set out in section 618(1), namely –

- (a) copies of resolutions of members passed otherwise than at general meetings;
- (b) minutes of proceedings of general meetings; and

(c) written records of decisions of the sole member.

9. These documents are not restricted to records that only come into existence after the commencement date, as can be seen from the use of the words “the records mentioned in section 618”, instead of the words “records required to be kept under section 618”. If the intention is to restrict the records to those that exist after the commencement date, the whole of subsection 4(b) may be rendered meaningless.

10. The same interpretation also applies to the proposed section 619(4)(b) which is basically the same as the current provision except for the amendment of “records” to “specified record”.

Clause 81 of the Bill (in relation to item (d) in the Letter)

11. Pursuant to the proposed section 805B(b), regulations to be made under the proposed section 805A may provide that if a person who is acting on behalf of the company contravenes any of the regulations made under that section [namely, section 805A], an offence is committed by that person.

12. In the Government’s written responses of 17 August 2018 to the Assistant Legal Adviser of the Legislative Council, we have explained that it is the policy intent that the regulations to be made under the proposed section 805A will impose criminal liability on every agent of the company who authorises or permits contravention of the regulations, similar to the existing law under section 792(6).

13. An agent, by its ordinary meaning, refers to a person who acts on behalf of another person or group and falls within the category of persons mentioned in the proposed section 805B. Further, section 805B is similar to the existing section 660(b) of the CO. Section 7(2) of Cap. 622B is comparable with the policy intent of the Government as mentioned in paragraph 12 above, since section 7(2) also provides that where the person [namely, a person acting on behalf of the company] has done something in respect of the company’s contravention, the person commits an offence.

Yours sincerely,



(TE Chi-wang)

for Secretary for Financial Services and the Treasury

c.c.

Clerk to Bills Committee  
Companies Registry  
Department of Justice

(Attn: Ms Connie SZETO)  
(Attn: Ms Ellen CHAN)  
(Attn: Mr Alan CHONG  
Mr Jonathan LUK  
Dr Stefan LO)