

Bills Committee on Companies (Amendment) Bill 2018

**Clause-by-clause Examination
Draft Committee Stage Amendments**

PURPOSE

This paper sets out the Government's proposed Committee Stage Amendments ("CSAs") to the Companies (Amendment) Bill 2018 ("the Bill") which could improve the clarity of the Bill and the consistency between its Chinese text and English text.

ADVICE SOUGHT

2. Members are invited to examine the Government's proposed draft CSAs in marked-up form at **Annex A**. The full set of CSAs is at **Annex B**. The proposed CSAs may be subject to revision.

Financial Services and the Treasury Bureau
20 August 2018

Companies (Amendment) Bill 2018

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

Marked-up Version

[Note: This marked-up version is for general reference only. In case of discrepancy, the CSA version at Annex B shall prevail.]

Clause 33(5)

This CSA concerns the Chinese text only.

Clause 34(3) and 34(5)

These CSAs concern the Chinese text only.

Clause 37

In section 366¹:

“366. Group of small guarantee companies

.
. .

- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), another company becomes a new member of the group in a financial year of the holding company such that ~~the conditions specified in section 1(14) of Schedule 3 are not satisfied~~ a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied, for the financial year, the group is disqualified as a group of small guarantee companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).

¹ This technical CSA is proposed to correct a textual error in the Chinese text of the Bill, and does not make any substantive amendment *per se*.

- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), ~~the conditions specified in section 1(14) of Schedule 3 are not satisfied~~ a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).”

Clause 60

This CSA concerns the Chinese text only.

Clause 64(5)

In the proposed section 619(4)(b)(i)²:

“619. Place where records must be kept

- .
- .
- .
- (4) Subsection (2) does not require a company to notify the Registrar of the place at which a specified record is kept, if—
 - (a) for a specified record that came into existence on or after the commencement date of this section—it has at all times been kept at the company’s registered office; or
 - (b) for a specified record that is a copy of a resolution, minutes or written record mentioned in section 618(1) which came into existence before that commencement date—
 - (i) immediately before that commencement date, the company kept the specified record for the purposes of section 119A ~~or 153C(3)~~ of the predecessor Ordinance; and
 - (ii) on and after that commencement date, the specified record is kept for the purposes of section 618 at the place at which it was kept immediately before that commencement date.”

² Taking into account the comments from LegCo Assistant Legal Adviser (“ALA”), this technical CSA deletes the reference to section 153C(3) of the predecessor Companies Ordinance (Cap. 32) which is not relevant in the present context.

Clause 85(6)

In the proposed section 2(1) of Schedule 1³:

“2. Parent undertaking

- (1) For the purposes of ~~Part 9 this Schedule and Part 9~~, an undertaking is a parent undertaking of another undertaking if—
- (a) it has control over that other undertaking; or
 - (b) it is a parent of that other undertaking for the purposes of the accounting standards applicable to its financial statements.

.
.
.”

Clause 85

In section 4 of Schedule 1⁴:

“4. Subsidiary undertaking

- (1) For the purposes of ~~this Ordinance~~this Schedule and Part 9, an undertaking is a subsidiary undertaking of another undertaking if that other undertaking is a parent undertaking of it.
- (2) For the purposes of ~~this Ordinance~~this Schedule and Part 9, an undertaking is also a subsidiary undertaking of another undertaking if a parent undertaking of it is a subsidiary undertaking of that other undertaking.”

Clause 86(22)

This CSA concerns the Chinese text only.

Clause 92

In the proposed section 4A in the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622 sub. leg. B)⁵:

“4A. Display of English and Chinese registered names~~names registered for~~

³ This technical CSA is proposed to improve the clarity of the provision.

⁴ This technical CSA is proposed to improve the clarity of the provisions.

⁵ This technical CSA is proposed in response to ALA’s comments. It clarifies the intention that the new section 4A applies to all companies.

limited company

- (1) If a ~~limited~~ company has an English registered name and intends to display or state a name of or for the company in English—
 - (a) at the registered office or any business venue of the company;
 - (b) in any communication document or transaction instrument of the company or any other document on which the company's common seal is affixed; or
 - (c) on any website of the company,

the company may only display or state its English registered name.

- (2) If a ~~limited~~ company has a Chinese registered name and intends to display or state a name of or for the company in Chinese—
 - (a) at the registered office or any business venue of the company;
 - (b) in any communication document or transaction instrument of the company or any other document on which the company's common seal is affixed; or
 - (c) on any website of the company,

the company may only display or state its Chinese registered name.”

Companies (Amendment) Bill 2018

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
33(5)	In the proposed section 359(5)(a), in the Chinese text, by adding “的業務” after “受規管活動”.
34(3)	In the Chinese text, by deleting “2(a)” and substituting “(2)(a)”.
34(5)	In the Chinese text, by deleting “2(a)” and substituting “(2)(a)”.
37	By deleting subclause (3) and substituting— “(3) Section 366(4)— Repeal “the conditions specified in section 1(14) of Schedule 3 are not satisfied” Substitute “a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied,”. (4) Section 366(5)— Repeal “the conditions specified in section 1(14) of Schedule 3 are not satisfied” Substitute “a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied,”.”.
60	(a) By renumbering the clause as clause 60(1). (b) By adding—

“(2) Section 559(1)(b), Chinese text—

Repeal

“文本”

Substitute

“通知”.”.

64(5) In the proposed section 619(4)(b)(i), by deleting “or 153C(3)”.

85(6) In the proposed section 2(1), by deleting “Part 9” and substituting “this Schedule and Part 9”.

85 By adding—

“(7) Schedule 1, section 4(1) and (2)—

Repeal

“this Ordinance”

Substitute

“this Schedule and Part 9”.”.

86(22) In the Chinese text, by deleting “第 1 條 2(5)” and substituting “第 2(5)條”.

92 In the proposed section 4A—

(a) in the heading, by deleting “**names registered for limited company**” and substituting “**registered names**”;

(b) in subsections (1) and (2), by deleting “limited”.