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**Report of the Bills Committee on Companies (Amendment) Bill 2018**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Companies (Amendment) Bill 2018 ("the Bills Committee").

**Background**

2. The new Companies Ordinance (Cap. 622) ("new CO") provides for a modern statutory framework for the incorporation and operation of companies in Hong Kong. A number of measures have been introduced under the new CO to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of small and medium-sized enterprises ("SMEs"). The new CO was enacted in July 2012<sup>1</sup> and most provisions of the ordinance and relevant items of its subsidiary legislation commenced operation on 3 March 2014.<sup>2</sup>

3. Based on the operational experience since the commencement of the new CO and feedback from various stakeholders, the Administration has identified certain provisions of the ordinance that should be amended to incorporate new developments, improve the clarity and operation of the ordinance, as well as to further facilitate business in Hong Kong.

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<sup>1</sup> The Companies Bill was passed by the Legislative Council ("LegCo") at the meeting of 11 July 2012. 12 items of subsidiary legislation were made under the new Companies Ordinance (Cap. 622) ("new CO") in 2013.

<sup>2</sup> Relevant provisions in Parts 2, 12 and 16 of, and Schedules 2, 6 and 11 to, the new CO regarding the new inspection arrangement of usual residential addresses of company directors and full identification numbers of individuals, and section 908 of, and Schedule 8 to, the new CO concerning uncertificated securities are not yet in operation.

## **The Bill**

4. The Administration introduced the Companies (Amendment) Bill 2018 ("the Bill") into the Legislative Council ("LegCo") at the Council meeting of 25 April 2018. The Bill seeks to amend the new CO and eight items of its subsidiary legislation to: (a) improve the operation of the accounts provisions, (b) expand the types of companies within the reporting exemption, and (c) provide for miscellaneous and related matters in relation to various administrative, procedural and technical requirements regulating companies and non-Hong Kong companies.

5. The major provisions of the Bill are set out in **Appendix I**. The Bill, if passed, would come into operation on 1 February 2019, except for two provisions that would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. The two provisions seek to repeal section 792 of, and item 7 of Schedule 7 to, the new CO which relate to the disclosure requirements on non-Hong Kong companies and the related offence under the compounding scheme.

## **The Bills Committee**

6. At the House Committee meeting on 27 April 2018, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix II**. Under the chairmanship of Hon Christopher CHEUNG, the Bills Committee has held two meetings to study the Bill including one meeting to receive views from two deputations. The Bills Committee has also received a total of 13 written submissions. A list of the deputations which have provided views to the Bills Committee is in **Appendix III**.

## **Deliberations of the Bills Committee**

7. The Bills Committee supports the Bill in general. The main subjects deliberated by the Bills Committee are set out below:

- (a) Benefits of the proposed changes brought by the Bill (paragraphs 8 – 9);
- (b) Disclosure requirements relating to the names of directors (paragraphs 10 – 12);
- (c) Alignment of penalty provisions relating to financial statements and reports (paragraphs 13 – 14);

- (d) Expansion of the scope of companies entitled to reporting exemption (paragraphs 15 – 22);
- (e) Requirement on the display of company name (paragraphs 23 – 25); and
- (f) Miscellaneous issues (paragraphs 26 – 28).

#### Benefits of the proposed changes brought by the Bill

8. The Bills Committee notes that deputations are generally supportive of the initiatives in the Bill which seek to simplify statutory procedures and remove ambiguities and inconsistencies with a view to reducing the compliance cost of companies and catering for the needs of SMEs. Some members of the Bills Committee have enquired about the Administration's publicity and promotional work for enhancing public awareness of the benefits and proposed changes brought by the Bill.

9. The Administration has reiterated that most amendments proposed in the Bill are technical amendments to incorporate new developments after the commencement of the new CO and to clarify the policy intent or removing ambiguities and inconsistencies. No substantial changes are introduced to the existing statutory framework under the new CO. The Companies Registry will step up publicity so that companies including SMEs and relevant stakeholders will better understand the proposed amendments. Relevant measures include issuing letters to registered companies on the details of the amendments, setting up a designated hotline to answer enquiries, arranging seminars for and distributing promotional leaflets to stakeholders.

#### Disclosure requirements relating to the names of directors

10. The existing section 390 of the new CO requires a holding company to list in its directors' report the names of the directors of all of its subsidiary undertakings. The Bill seeks to amend the section to provide for alternative means to disclose the names of such directors (clause 47 of the Bill). The Bills Committee has sought details of the proposed amendments.

11. The Administration has advised that the new CO requires a holding company to list the names of the directors of its subsidiary undertakings in its directors' report. Considering the compliance burden of large corporate groups, the Bill proposes alternative means of complying with the disclosure requirement, 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 its subsidiary undertakings at the holding company's registered office and making it available for inspection by its members. The Administration

considers that such arrangements can strike a balance among enhancing corporate transparency, protecting the interests of members of the companies and reducing compliance costs.

12. Some members of the Bills Committee have expressed concern that allowing a holding company to provide the names of the directors of all of its subsidiaries by keeping the list at the holding company's registered office may not facilitate access to the information by members of the public. The Administration has explained that information on all companies, including the names of the directors of a holding company and all of its subsidiaries, is available on the Companies Register, which is accessible by members of the public.

#### Alignment of penalty provisions relating to financial statements and reports

13. Noting that the present penalty level for an offence relating to revised financial statements and reports (i.e. maximum period of imprisonment of 12 months as prescribed in section 20 of the Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622F)) ("Revision Regulation") is lower than the corresponding offence relating to the original financial statements and reports (i.e. maximum period of imprisonment of two years as provided in the relevant provision of the new CO), the Bills Committee has enquired whether this issue is addressed in the Bill.

14. The Administration has explained that during the scrutiny of the subsidiary legislation made under the new CO in 2013, the Subcommittee on Subsidiary Legislation Made under the New Companies Ordinance requested the Administration to review and remove the inconsistency in the penalty levels relating to financial statements and reports in the next legislative exercise to amend the new CO. Clause 105 of the Bill seeks to align the penalty levels for the relevant offences to a maximum period of imprisonment of two years.

#### Expansion of the scope of companies entitled to reporting exemption

15. Under Division 2 of Part 9 of and Schedule 3 to the new CO, a company is entitled to adopt simplified accounting and financial reporting if it falls within the reporting exemption. Clauses 33, 35 to 38, and 86 of the Bill seek to amend Division 2 of Part 9 of and Schedule 3 to the new CO to expand the types of companies that would be eligible for the reporting exemption by including:

- (a) a holding company which is a private company not carrying on certain businesses such as the banking business ("specified business") of a group of small private companies or a group of eligible private companies of which no member is a

non-Hong Kong body corporate carrying on specified business subject to compliance with applicable conditions;

- (b) a holding company which is a company limited by guarantee not carrying on specified business of a group of small guarantee companies of which no member is a non-Hong Kong body corporate carrying on specified business; and
- (c) a holding company which is either a private company or a company limited by guarantee not carrying on specified business of a mixed group of companies (i.e. comprising both (i) small private companies or eligible private companies and (ii) small guarantee companies) of which no member is a company or a non-Hong Kong body corporate carrying on specified business, subject to compliance with applicable conditions.

16. The Bills Committee notes that in order to benefit from the simplified reporting arrangement, the holding company and all of its subsidiaries, including non-Hong Kong subsidiaries, have to meet the applicable specified size criteria (e.g. not exceeding HK\$100 million assets, HK\$100 million revenue and 100 employees for small private companies; not exceeding HK\$200 million assets, HK\$200 million revenue and 100 employees for eligible private companies; and not exceeding \$25 million revenue for small guarantee companies<sup>3</sup>). Qualified small private companies can benefit from the simplified reporting arrangement automatically. For eligible private companies, simplified financial reports can be prepared if their members holding at least 75% of the voting rights so resolve and no other member objects.

17. Some members of the Bills Committee, including Mr CHUNG Kwok-pan and Mr CHAN Chun-ying, have expressed concern about the size criteria of companies qualifying for the reporting exemption and enquired if the Administration would review the criteria taking into account factors such as inflation and capital costs. The Bills Committee also notes that some deputations have requested the Administration to adjust the size criteria having regard to the actual economic environment, the surge in property and consumer prices and the present inflation rate. In addition, Mr Christopher CHEUNG has enquired about the reasons for setting the size criteria of small private companies at HK\$100 million assets, HK\$100 million revenue and 100 employees.

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<sup>3</sup> Sections 361 to 366 of the new CO provide for the respective meanings of a small private company, an eligible private company, a small guarantee company, a group of small private companies, a group of eligible private companies and a group of small guarantee companies.

18. The Administration has advised that the Bill aims to expand the scope of the reporting exemption without amending the size criteria. The size criteria for the reporting exemption was formulated during the exercise to rewrite the predecessor Companies Ordinance (Cap. 32) ("predecessor CO") after taking into account views and comments received from stakeholders. That said, the Administration will keep the implementation of the new CO, including the size criteria, under review on an on-going basis.

19. The Bills Committee has also sought clarification on the reason(s) for proposing to replace, for the purposes of section 359(2)(c)(ii) of the new CO, the current three different sets of conditions prescribed in section 360(2)(a), (b) and (c) of the new CO with only one set of conditions set out in the proposed section 360(2) of the new CO pursuant to clause 34 of the Bill.

20. The Administration has advised that under section 360(2)(a) of the new 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.

21. The Administration has further explained that under section 360(2)(c) of the new 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 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.

22. After taking into account the views of stakeholders (including the Hong Kong Institute of Certified Public Accountants), the Administration considers 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, the Administration considers that it should not be necessary to obtain approval from the members of any subsidiary within the group of companies.

#### Requirement on the display of company name

23. The Bills Committee notes that clause 91 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) ("Disclosure Regulation") and clause 92 adds the new section 4A to the Disclosure

Regulation so that a company which has both an English name and a Chinese name is allowed to display at places (e.g. its registered office) and to state on its website and in certain documents (e.g. its business letters) only its English name or Chinese name in accordance with sections 3 and 4 of the Disclosure Regulation. On the other hand, clause 8 of the Bill proposes to amend section 81 of the new CO to the effect that if a company has both an English name and a Chinese name, its articles of association ("the Articles") must state both the English name and the Chinese names. The Bills Committee has enquired why different requirements regarding company name are proposed.

24. The Administration has responded that the policy intent of the amendments is to enable a company to use either its English or Chinese name for purposes other than in its Articles, for instance in the company's common seal, its business cards and stationery. On the other hand, if a company has both English and Chinese names, the Articles must state both names as the Articles are the company's constitution and a statutory contract between members themselves and between individual members and the company. The Articles are required to be delivered to the Registrar of Companies for registration and be available for inspection by the public. Hence, the Administration considers it necessary that the company, if it has an English name and a Chinese name, must state both the English and Chinese names in its Articles for public search.

25. The Bills Committee also notes that, in response to an enquiry made by the Legal Adviser to the Bills Committee, the Administration will move an amendment to clause 92 of the Bill to the effect that the proposed new section 4A of the Disclosure Regulation, which contains the requirements on the display of company name, applies to a company instead of a limited company.

#### Miscellaneous issues

26. Clause 64 of the Bill proposes to amend section 619 of the new CO regarding the keeping of specified records by a company at its registered office or a prescribed place. The Bills Committee notes that the proposed section 619(4)(b) of the new CO 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. In response to an enquiry made by the Legal Adviser to the Bills Committee, the Administration will propose an amendment to clause 64(5) of the Bill to delete from the proposed section 619(4)(b)(i) of the new CO, the reference to section 153C(3) of the predecessor CO, which deals with written records of decisions of a sole director of a private company and is not relevant in the present context.

27. The Bills Committee notes that under the new CO, two or more of the wholly owned subsidiaries of a company may amalgamate (i.e. horizontal

amalgamation) through a court-free procedure. The Bills Committee has sought clarification on whether the Bill includes provisions allowing subsidiaries of different companies to adopt the court-free procedure when carrying out amalgamation.

28. The Administration has explained that clauses 69 and 70 of the Bill seek to amend sections 678 and 681 of the new CO to the effect that the court-free procedure for horizontal amalgamation is also available to subsidiaries of a holding company incorporated outside Hong Kong so long as the merging companies are Hong Kong companies. The proposed amendments do not deal with amalgamation of companies which belong to different corporate groups.

### **Amendments to be moved by the Government**

29. Apart from the proposed amendments explained in paragraphs 25 and 26 above, the Administration will propose amendments to introduce technical or textual amendments to the Bill including amendments made to ensure consistency between the English and Chinese texts of the provisions contained or referred to in the Bill. The Bills Committee has examined the draft amendments proposed by the Administration to the Bill and has no objection to them.

30. The Bills Committee will not propose any amendments to the Bill.

### **Resumption of Second Reading debate**

31. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 28 November 2018.

### **Consultation with the House Committee**

32. The Bills Committee reported its deliberations to the House Committee on 16 November 2018.



### Major provisions of the Companies (Amendment) Bill 2018

- (a) Clause 7 amends section 76 of the new Companies Ordinance ("the new Co") to allow a company's articles to be in electronic form;
- (b) Clause 8 substitutes section 81 to clarify that if a company has both an English name and a Chinese name, both names must be stated in its articles;
- (c) Clause 9 amends section 88 to provide for an exemption from the registration requirement under that section if the alteration is in respect of a change of the company name;
- (d) Clause 10 amends section 124 to clarify that for a company with both an English name and a Chinese name, the common seal of the company may be engraved with only its English name or Chinese name;
- (e) Clauses 11 to 14 and 17 amend sections 142, 171, 173, 175 and 184 respectively to specify that the statement of capital should report the share capital position immediately after the relevant change;
- (f) Clauses 15, 16, 18 and 19 amend sections 180, 182, 188 and 190 respectively to provide that if the holders of shares or members in a class all agree, by written consent or resolution, to a variation of the class rights, the variation may take effect on the date of, or as specified in, the consent or resolution. No holder or member may apply to the court to have the variation disallowed in such circumstances;
- (g) Clause 20 amends section 201 to clarify that the obligation to give particulars of class rights in the statement of capital only arises if the share capital of a company is divided into different classes of shares;
- (h) Clauses 33 to 38, and 86 contain new provisions or amendments to the existing provisions to facilitate enterprises, mainly small and medium-sized enterprises to take advantage of the reporting exemption provisions, i.e. provisions that allow companies to adopt simplified accounting and financial reporting;
- (i) Clauses 32, 39 to 44, 46, 47, 49, 50, 52, 53 and 105 contain technical amendments to streamline the operation of the accounting and financial reporting requirements in the new CO and the Companies (Revision of

Financial Statements and Reports) Regulation (Cap. 622F) ("the Revision Regulation"), and to facilitate compliance with them, which include –

- (j) Clause 55 amends section 481 to require that a company must also cause to be recorded resolutions passed by directors without a meeting;
- (k) Clause 56 amends section 482 to clarify the matter relating to company records as evidence of the proceedings at meetings of directors;
- (l) Clause 58 amends section 525 on the "small payment" exception to the prohibition on payments for loss of office of a director regarding what payments are not to be aggregated for the purpose of calculating the total amount of the small payment;
- (m) Clauses 62 to 66 clarify certain provisions in Part 12 of the new CO which deals with company administration and procedure;
- (n) Clauses 69 and 70 amend section 678 and 681 to the effect that the holding company is not required to be incorporated in Hong Kong for a horizontal amalgamation;
- (o) Clause 71 clarifies that in the case of a takeover offer relating to shares in a class, the requirement for 90% of the number of shares means 90% of the number of shares in the class;
- (p) Clause 72 amends section 761 to modify the conditions for granting applications for administrative restoration of companies;
- (q) Clause 73 amends section 773 to expressly provide for the power of the Government to dispose of any property or right vested as bona vacantia under section 292 of the predecessor Companies Ordinance (Cap. 32);
- (r) Clauses 74 and 80 amend sections 774 and 803 respectively to clarify that an authorized representative of a non-Hong Kong company must have an address in Hong Kong;
- (s) Clauses 75, 76 and 77 contain technical amendments requiring the name of a non-Hong Kong company to be in characters of the Latin alphabet instead of being in Roman script for various purposes;
- (t) Clauses 79 repeals section 792 which contains the obligations on non-Hong Kong companies to disclose their names and other prescribed information and related offences. Clause 81 adds new sections 805A and 805B to empower the Financial Secretary to make subsidiary

legislation to provide for the disclosure requirements for non-Hong Kong companies and related offences;

- (u) Clause 85(6) updates the meaning of "parent undertaking" in section 2 of Schedule 1 for the purposes of Part 9 of the new CO in view of the latest accounting standards issued by the Hong Kong Institute of Certified Public Accountants;
- (v) Clauses 92 adds a new section 4A to the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) to provide that if a limited company has an English registered name or a Chinese registered name and intends to display or state a name of or for the company in English or Chinese at prescribed places or in certain documents or on its websites, the company may display or state only its English registered name or its Chinese registered name respectively;
- (w) Clause 101 amends the Companies (Summary Financial Reports) Regulation (Cap. 622E) to clarify that a reference to a holding company is to be construed in accordance with section 357(4)(b) as added by clause 32;
- (x) Clauses 104 and 105 amend sections 19 and 20 of the Revision Regulation respectively. Clause 104 clarifies that a person preparing an auditor's report on revised financial statements for a company also has the right to receive notice of the general meeting of the company. Clause 105 aligns the penalty provision regarding revised financial statements with that regarding the original financial statements;
- (y) Clauses 109 and 110 amend the Companies (Model Articles) Notice (Cap. 622H) to clarify that an ordinary resolution of a company is required only for certain types of alteration of the share capital of the company; and
- (z) Clause 115 amends the Companies (Non-Hong Kong Companies) Regulation (Cap. 622J) to clarify that the address of an authorized representative of a registered non-Hong Kong company contained in the company's annual return must be an address in Hong Kong.

**Bills Committee on Companies (Amendment) Bill 2018**

**Membership list**

**Chairman** Hon Christopher CHEUNG Wah-fung, SBS, JP

**Members** Hon James TO Kun-sun  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK Wing-hang  
Hon CHUNG Kwok-pan  
Dr Hon Junius HO Kwan-yiu, JP  
Hon CHAN Chun-ying

(Total : 11 members)

**Clerk** Ms Connie SZETO

**Legal Advisers** Ms Wendy KAN

**Bills Committee on Companies (Amendment) Bill 2018**

**List of organizations from which the Bills Committee has received views**

1. Association of Women Accountants (Hong Kong) Limited
2. Baker Tilly Hong Kong Limited
3. The Chinese Manufacturers' Association of Hong Kong
4. Edwin Yeung & Company (CPA) Limited
5. Hong Kong Institute of Certified Public Accountants
6. The Hong Kong Institute of Chartered Secretaries
7. Kenny Tam & Co. Certified Public Accountants
8. Li, Tang, Chen & Co
9. Nexia Charles Mar Fan Limited
10. Patrick Wong C.P.A. Limited
11. The Society of Chinese Accountants & Auditors
12. Ting Ho Kwan & Chan