

**立法會**  
**Legislative Council**

LC Paper No. LS53/17-18

**Paper for the House Committee Meeting  
on 27 April 2018**

**Legal Service Division Report on  
Companies (Amendment) Bill 2018**

**I. SUMMARY**

- 1. The Bill**                      The Bill seeks to amend the Companies Ordinance (Cap. 622) 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.
- 2. Public Consultation**      The Administration consulted relevant stakeholders and the Standing Committee on Company Law Reform in 2016 on the proposed legislative amendments and they were generally supportive of the legislative proposals.
- 3. Consultation with LegCo Panel**      The Panel on Financial Affairs was consulted on the legislative proposals on 5 January 2018. Members raised no objection.
- 4. Conclusion**                      The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a number of amendments to Cap. 622 following its implementation since 3 March 2014, Members may wish to form a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 25 April 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CO/2/2C(2018)) issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 4 April 2018 for further details.

### **Object of the Bill**

2. The Bill seeks to amend the Companies Ordinance (Cap. 622) 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.

### **Background**

3. Cap. 622 was enacted in July 2012 to, among other things, reform and modernize Hong Kong company law. Relevant items of subsidiary legislation have also been made. Most of the provisions of Cap. 622, and the subsidiary legislation, commenced operation on 3 March 2014.<sup>1</sup>

4. According to paragraph 3 of the LegCo Brief, based on the operational experience since the commencement of Cap. 622 and the feedback from various stakeholders, the Administration proposes to make a number of amendments to Cap. 622 and relevant items of subsidiary legislation.

### **Provisions of the Bill**

#### Improving the operation of the accounts provisions

5. Part 9 of Cap. 622 and relevant items of subsidiary legislation contain the accounting and auditing requirements in relation to companies. These requirements include the obligation to keep accounting records of a

---

<sup>1</sup> Relevant provisions in Parts 2, 12 and 16 of, and Schedules 2, 6 and 11 to, Cap. 622 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, Cap. 622 concerning uncertificated securities are not yet in operation.

company and the duties to prepare financial statements and directors' report of a company.

6. The Bill proposes to amend Part 9 of Cap. 622 and the Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622F) to streamline the operation of certain accounting and financial reporting requirements and to facilitate compliance with them. Some of these amendments are summarized below:

- (a) where a holding company is also a wholly owned subsidiary of another body corporate, the Bill proposes to amend section 379 of Cap. 622 to provide an option for the holding company to prepare consolidated financial statements instead of its own financial statements as in the current regime (clause 42 of the Bill);
- (b) with respect to the requirement to list in a holding company's directors' report the names of the directors of its subsidiary undertakings under the existing section 390 of Cap. 622, the Bill seeks to amend the section to provide for alternative means to disclose the names of such directors, including making the list available on the holding company's website (clause 47 of the Bill); and
- (c) the Bill proposes to amend section 20 of Cap. 622F to align the maximum term of imprisonment upon conviction on indictment for the offence relating to revised financial statements under section 20(3) of Cap. 622F to that applicable to the offence relating to financial statements under section 413(3) of Cap. 622 (i.e. two years). In this connection, a new section 450(4A) to Cap. 622 is also proposed to be added to provide for the maximum penalties that may be prescribed for the offences in relation to revised financial statements under regulations made by the Financial Secretary ("FS") (clauses 53 and 105 of the Bill). These amendments are proposed in response to the views of the Subcommittee on Subsidiary Legislation Made under the New Companies Ordinance ("the Subcommittee") in 2013<sup>2</sup>.

---

<sup>2</sup> The Subcommittee noted that the said offences, namely, the offence under section 20(3) of Cap. 622F and the offence under section 413(3) of Cap. 622 carried different penalties although they were similar in nature and that the maximum term of imprisonment that might be imposed by regulations made by FS under section 450 of Cap. 622 was 12 months. Members may refer to paragraphs 17, 18 and 22 of the Second Report of the Subcommittee to the House Committee (LC Paper No. CB(1)949/12-13) (a soft copy of which is available at <http://www.legco.gov.hk/yr12-13/english/hc/papers/hc0503cb1-949-e.pdf>) for more information.

7. In addition, the Bill seeks to update the meaning of "parent undertaking" in section 2 of Schedule 1 to Cap. 622 for the purposes of Part 9 of Cap. 622. According to paragraph 6 of the LegCo Brief, this amendment is proposed to reflect the latest accounting standards issued by the Hong Kong Institute of Certified Public Accountants (clause 85 of the Bill).

#### Expanding the types of companies within the reporting exemption

8. Under Division 2 of Part 9, and Schedule 3 to, Cap. 622, a company is entitled to adopt simplified accounting and financial reporting if it falls within the reporting exemption.

9. Clauses 33 to 38, and 86 of the Bill propose to amend Division 2 of Part 9 of, and Schedule 3, to Cap. 622 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.<sup>3</sup>

10. According to paragraph 5 of the LegCo Brief, the above proposed expansions are made to provide more flexibility to small and medium-sized enterprises to reduce their compliance costs.

---

<sup>3</sup> Sections 361 to 366 of Cap. 622 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.

### Other amendments

11. The Bill also introduces a number of miscellaneous and related amendments to Cap. 622 and relevant items of subsidiary legislation in relation to various administrative, procedural and technical requirements regulating companies and non-Hong Kong companies. Some of these proposed amendments are:

- (a) amendment to section 76 of Cap. 622 to allow a company's articles of association to be in electronic form (clause 7 of the Bill);
- (b) amendments to sections 180, 182, 188 and 190 of Cap. 622 to the effect that where the holders of shares in, or members of, a company 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 and that no holder of shares or member in the class may apply to the Court of First Instance to have the variation disallowed under such circumstances (clauses 15, 16, 18 and 19 of the Bill);
- (c) amendments to section 481 of Cap. 622 to require a company to cause all resolutions passed by its directors without a meeting to be recorded (clause 55 of the Bill); and
- (d) repeal of section 792 of Cap. 622 which contains the obligations on non-Hong Kong companies to disclose their names and other prescribed information and related offences, and addition of new sections 805A and 805B to Cap. 622 to empower FS to make subsidiary legislation to provide for the disclosure requirements for non-Hong Kong companies and related offences respectively (clauses 79 and 81 of the Bill).

### Commencement

12. 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. Those two provisions seek to repeal section 792 of, and item 7 of Schedule 7 to, Cap. 622 which relate to the disclosure

requirements on non-Hong Kong companies as explained in paragraph 11(d) above and the related offence under the compounding scheme.<sup>4</sup>

### **Public Consultation**

13. According to paragraph 18 of the LegCo Brief, the Administration consulted relevant stakeholders in 2016, including professional bodies and chambers of commerce, as well as the Standing Committee on Company Law Reform ("SCCLR"), to gauge their views on the proposed legislative amendments. According to the Administration, the stakeholders and SCCLR were generally supportive of the legislative proposals.

### **Consultation with LegCo Panel**

14. As advised by the Clerk to the Panel on Financial Affairs, the Panel was briefed on the above legislative proposals on 5 January 2018. Members raised no objection but enquired whether the legislative proposals would address all the concerns and technical issues raised by the stakeholders since the commencement of Cap. 622, the legislative timetable and the proposed amendments to the technical accounting and reporting provisions under Cap. 622.

### **Conclusion**

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a number of amendments to Cap. 622 following its implementation since 3 March 2014, Members may wish to form a Bills Committee to study the Bill in detail.

Prepared by

KAN Wan-ye, Wendy  
Assistant Legal Adviser  
Legislative Council Secretariat  
25 April 2018

---

<sup>4</sup> Under section 899 of Cap. 622, the Registrar of Companies ("the Registrar") may give a person reasonably believed to have committed an offence specified in Schedule 7 to Cap. 622 a notice to require the person to rectify the default by paying a compounding fee to the Registrar and remedying the breach constituting the offence within a specified period. If that person complies with the notice, no proceedings will be instituted against that person for that offence.