

Companies (Amendment) Bill 2018

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A BILL

To

Amend the Companies Ordinance and its subsidiary legislation to improve the operation of the accounts provisions; to expand the types of companies within the reporting exemption; and to provide for miscellaneous and related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2018.
 - (2) Subject to subsection (3), this Ordinance comes into operation on 1 February 2019.
 - (3) Sections 79 and 89 come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
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Part 2

Amendments to Companies Ordinance

2. Companies Ordinance amended

The Companies Ordinance (Cap. 622) is amended as set out in this Part.

3. Section 2 amended (interpretation)

Section 2(4)(b)(ii)—

Repeal

“while in electronic form”

Substitute

“while in the form of an electronic record”.

4. Section 5 amended (dormant company)

Section 5(4)—

Repeal

“was a dormant company”

Substitute

“was deemed to be a dormant company”.

5. Part 1, Division 4 heading amended (interpretation of this Ordinance: holding company and subsidiary, and parent undertaking and subsidiary undertaking)

Part 1, Division 4, heading—

Repeal

“Subsidiary, and Parent Undertaking and Subsidiary Undertaking”

Substitute

“Subsidiary”.

6. Section 16 repealed (parent undertaking and subsidiary undertaking)

Section 16—

Repeal the section.

7. Section 76 amended (language of articles)

Section 76—

Repeal

“printed”.

8. Section 81 substituted

Section 81—

Repeal the section

Substitute

“81. Company name

- (1) If a company has both an English name and a Chinese name, its articles must state both the English name and the Chinese name.
- (2) If a company has only an English name or a Chinese name, its articles must state the English name or the Chinese name.”.

9. Section 88 amended (alteration by special resolution or ordinary resolution)

After section 88(5)—

Add

“(5A) Subsection (5) does not apply to an alteration by a special resolution to change the name of a company passed under section 107 or 770.”.

10. Section 124 amended (company may have common seal etc.)

(1) Section 124(2)—

Repeal

“legible form”

Substitute

“compliance with subsection (2A) in legible form”.

(2) After section 124(2)—

Add

“(2A) A company’s common seal must be engraved with—

(a) if the company has both an English name and a Chinese name—the English name or the Chinese name or both; or

(b) if the company has only an English name or a Chinese name—the English name or the Chinese name.”.

11. Section 142 amended (return of allotment)

Section 142(2)(b)—

Repeal

“capital as at the date of the allotment”

Substitute

“capital, as at the time immediately after the allotment.”.

12. Section 171 amended (notice of alteration of share capital)

Section 171(2)(c)—

Repeal

“capital as at the date of the alteration”

Substitute

“capital, as at the time immediately after the alteration.”.

13. Section 173 amended (notice of redenomination)

Section 173(2)—

Repeal

“capital as at the date of the redenomination”

Substitute

“capital, as at the time immediately after the redenomination.”.

14. Section 175 amended (notice of reconversion)

Section 175(2)—

Repeal

“capital as at the date of the reconversion”

Substitute

“capital, as at the time immediately after the reconversion.”.

15. Section 180 amended (varying class rights)

(1) Section 180(3)—

Repeal

“this section”

Substitute

“subsection (1)(b)”.

(2) Section 180—

Repeal subsection (4)**Substitute**

“(4) A variation takes effect—

- (a) if the consent for the variation is full consent—
at the time specified in subsection (4B); or
- (b) if the consent for the variation is not full
consent—at the time specified in subsection
(4C).

(4A) For the purposes of subsection (4), full consent for a
variation is—

- (a) written consent of all holders representing the
total voting rights of holders of shares in the
class; or
- (b) a resolution passed unanimously by all holders
representing the total voting rights of holders
of shares in the class at a separate general
meeting of those holders.

(4B) The time specified for the purposes of subsection
(4)(a) is—

- (a) the date of the full consent; or
- (b) if a later date is specified for the purpose in the
full consent—the later date.

- (4C) The time specified for the purposes of subsection (4)(b) is—
- (a) if no application is made under section 182 for the variation to be disallowed—the end of the period within which applications may be made under that section; or
 - (b) if an application is made under that section for the variation to be disallowed—
 - (i) the time when the application is withdrawn or finally determined; or
 - (ii) (if there is more than one application) the time when the last of the applications is withdrawn or finally determined.
- (4D) Subsection (4)(b) does not apply if the variation is disallowed.”.

16. Section 182 amended (disallowance or confirmation of variation by Court)

After section 182(1)—

Add

- “(1A) However, the holders may not apply to the Court under subsection (1) to have the variation disallowed if the variation is made with—
- (a) written consent of all holders representing the total voting rights of holders of shares in the class; or
 - (b) a resolution passed unanimously by all holders representing the total voting rights of holders of shares in the class at a separate general meeting of those holders.”.

17. Section 184 amended (notifying Registrar of variation)

Section 184(1)(b)—

Repeal

“the date on which”

Substitute

“the time immediately after”.

18. Section 188 amended (varying class rights)

(1) Section 188(3)—

Repeal

“this section”

Substitute

“subsection (1)(b)”.

(2) Section 188—

Repeal subsection (4)**Substitute**

“(4) A variation takes effect—

(a) if the consent for the variation is full consent—
at the time specified in subsection (4B); or(b) if the consent for the variation is not full
consent—at the time specified in subsection
(4C).(4A) For the purposes of subsection (4), full consent for a
variation is—

(a) written consent of all members in the class; or

(b) a resolution passed unanimously by all members
in the class at a separate general meeting of
those members.

- (4B) The time specified for the purposes of subsection (4)(a) is—
- (a) the date of the full consent; or
 - (b) if a later date is specified for the purpose in the full consent—the later date.
- (4C) The time specified for the purposes of subsection (4)(b) is—
- (a) if no application is made under section 190 for the variation to be disallowed—the end of the period within which applications may be made under that section; or
 - (b) if an application is made under that section for the variation to be disallowed—
 - (i) the time when the application is withdrawn or finally determined; or
 - (ii) (if there is more than one application) the time when the last of the applications is withdrawn or finally determined.
- (4D) Subsection (4)(b) does not apply if the variation is disallowed.”.

19. Section 190 amended (disallowance or confirmation of variation by Court)

After section 190(1)—

Add

- “(1A) However, the members may not apply to the Court under subsection (1) to have the variation disallowed if the variation is made with—
- (a) written consent of all members in the class; or

- (b) a resolution passed unanimously by all members in the class at a separate general meeting of those members.”.

20. Section 201 amended (statement of capital)

- (1) Section 201(2)(b)—

Repeal the semicolon

Substitute

“; and”.

- (2) Section 201(2)(b), Chinese text—

Repeal

“按或視作已按”

Substitute

“已按或視作已按”.

- (3) Section 201(2)(c)—

Repeal

“; and”

Substitute a full stop.

- (4) Section 201(2)—

Repeal paragraph (d).

- (5) After section 201(2)—

Add

“(2A) If the issued share capital is divided into different classes of shares, a statement of capital must also state, for each class of shares—

- (a) the particulars specified in subsection (3);
(b) the total number of issued shares in the class;

- (c) the amount paid up or regarded as paid up, and the amount (if any) remaining unpaid or regarded as remaining unpaid, on the total number of issued shares in the class; and
- (d) the total amount of issued share capital of the class.”.

21. Section 224 amended (registration of return if no application to Court)

Section 224(2)(c), Chinese text—

Repeal

“緊接股本減少後的時間”

Substitute

“緊接股本減少之後當時”.

22. Section 225 amended (registration of return if application to Court)

Section 225(2)(c), Chinese text—

Repeal

“緊接股本減少後的時間”

Substitute

“緊接股本減少之後當時”.

23. Section 227 amended (creditors entitled to object to reduction of share capital)

Section 227(2), Chinese text—

Repeal

“擬備”

Substitute

“議定”。

24. Section 230 amended (registration of order, minute and return)

Section 230(3)(c), Chinese text—

Repeal

“緊接股本減少後的時間”

Substitute

“緊接股本減少之後當時”。

25. Section 232 amended (liability to creditors omitted from list of creditors)

Section 232(3)(a), Chinese text—

Repeal

“擬定”

Substitute

“議定”。

26. Section 270 amended (return of share redemption or buy-back)

Section 270(2)(c), Chinese text—

Repeal

“緊接贖回或回購股份後的時間”

Substitute

“緊接贖回或回購股份之後當時”。

27. Section 275 amended (prohibition on financial assistance for acquisition of shares or for reducing or discharging liability for acquisition)

Section 275—

Repeal subsection (3).

28. Section 316 amended (return of allotment)

After section 316(2)—

Add

“(2A) Subsection (2)(b)(ii) does not apply if the debentures or debenture stock are transferable by delivery.”.

29. Section 337 amended (consequences of contravention of section 335 or 336)

Section 337(6), Chinese text—

Repeal

“借款人”

Substitute

“貸款人”.

30. Section 351 amended (obligation to keep copies of instruments creating charges)

After section 351(4)—

Add

“(4A) Subsection (4)(b) does not apply to a change of—
(a) the address of the company’s registered office;
or

- (b) the address of the registered non-Hong Kong company's principal place of business in Hong Kong.”.

31. Section 356 amended (Financial Secretary may make regulations for purposes of this Division)

Section 356(3)(b), English text—

Repeal

“prescribe”

Substitute

“prescribe”.

32. Section 357 amended (interpretation)

- (1) Section 357(1), definition of *annual consolidated financial statements*—

Repeal

“section 379(2)”

Substitute

“section 379(2) or (3A)(a)(ii)”.

- (2) Section 357(1), definition of *annual financial statements*—

Repeal

“section 379(1)”

Substitute

“section 379(1), (3A)(a)(i) or (b)”.

- (3) Section 357(1)—

Add in alphabetical order

“*accounting standards* (會計準則) means statements of standard accounting practice issued or specified by a body prescribed by the Regulation;

non-Hong Kong body corporate (非香港法人團體) means a body corporate incorporated outside Hong Kong;”.

(4) After section 357(3)—

Add

“(4) In this Part—

- (a) a reference to accounting standards applicable to any financial statements of a company is a reference to accounting standards as are, in accordance with their terms, relevant to the company’s circumstances and to the financial statements;
- (b) a reference to a holding company includes a parent undertaking that is a company, and a reference to a group of companies is to be construed accordingly; and
- (c) a reference to a parent undertaking or subsidiary undertaking is to be construed in accordance with Schedule 1.”.

33. Section 359 amended (company falling within reporting exemption)

(1) Section 359(2)—

Repeal paragraph (b)

Substitute

- “(b) it is the holding company of a group of companies, of which, at any time during the financial year, no member is—
- (i) a company specified in subsection (4); or
 - (ii) a non-Hong Kong body corporate specified in subsection (5); and”.

(2) Section 359(3)—

Repeal paragraph (b)

Substitute

- “(b) it is the holding company of a group of companies, of which, at any time during the financial year, no member is—
- (i) a company specified in subsection (4); or
 - (ii) a non-Hong Kong body corporate specified in subsection (5); and”.

(3) After section 359(3)—

Add

- “(3A) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
- (a) it is a private company or a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;
 - (b) it is the holding company of a group of companies, of which, at any time during the financial year, no member is—
 - (i) a company specified in subsection (4); or
 - (ii) a non-Hong Kong body corporate specified in subsection (5);
 - (c) the group of companies is qualified as a mixed group for the financial year; and
 - (d) (where any member of the group of companies is qualified as an eligible private company, but is not qualified as a small private company, for the

financial year) the conditions specified in section 360(2) are satisfied.”.

- (4) Section 359(4)—

Repeal

“subsections (1), (2) and (3)”

Substitute

“subsections (1), (2), (3) and (3A)”.

- (5) After section 359(4)—

Add

“(5) The non-Hong Kong body corporate specified for the purposes of subsections (2), (3) and (3A) is—

- (a) a non-Hong Kong body corporate that carries on any business that, had it been carried on in Hong Kong, would be required to be carried on under a valid banking licence granted under the Banking Ordinance (Cap. 155), or under a licence under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance;
- (b) a non-Hong Kong body corporate that—
 - (i) carries on any insurance business otherwise than solely as an agent; or
 - (ii) accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities; or

- (c) a non-Hong Kong body corporate that would have fallen within the meaning of public company in section 12 had it been incorporated under this Ordinance.
- (6) Despite section 358, the amendments made to subsections (2)(b) and (3)(b) by the Companies (Amendment) Ordinance 2018 (of 2018), and subsections (3A)(b)(ii) and (5), apply only in relation to a financial year beginning on or after the commencement date of section 33 of that Ordinance.”.

34. Section 360 amended (conditions specified for section 359(1)(c)(iii) and (2)(c)(ii))

- (1) Section 360, heading—

Repeal

“359(1)(c)(iii) and (2)(c)(ii)”

Substitute

“359(1)(c)(iii), (2)(c)(ii) and (3A)(d)”.

- (2) Section 360—

Repeal subsection (2)

Substitute

- “(2) The conditions specified for the purposes of section 359(2)(c)(ii) and (3A)(d) are—
- (a) subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in the holding company to the effect that the holding company is to fall within the reporting exemption for the financial year; and

(b) the members holding the remaining voting rights do not vote against the resolution.”.

(3) Section 360(3)(a)—

Repeal

“(2)(a)(i), (b)(i) or (c)(i)”

Substitute

“(2)(a)”.

(4) Section 360(3)(b)—

Repeal

“a member”

Substitute

“a member holding voting rights in the company”.

(5) Section 360(5)—

Repeal

“(2)(a)(i), (b)(i) or (c)(i)”

Substitute

“(2)(a)”.

35. Section 364 amended (group of small private companies)

(1) Section 364(1)(b), (2)(b) and (3), English text—

Repeal

“the condition specified in section 1(7)”

Substitute

“the conditions specified in section 1(7)”.

(2) Section 364(4)—

Repeal

“another company”

Substitute

“another company or non-Hong Kong body corporate”.

- (3) Section 364(4) and (5)—

Repeal

“the condition specified in section 1(7)”

Substitute

“a condition specified in section 1(7)”.

36. Section 365 amended (group of eligible private companies)

- (1) Section 365(1)(b), (2)(b) and (3), English text—

Repeal

“the condition specified in section 1(10)”

Substitute

“the conditions specified in section 1(10)”.

- (2) Section 365(4)—

Repeal

“another company”

Substitute

“another company or non-Hong Kong body corporate”.

- (3) Section 365(4) and (5)—

Repeal

“the condition specified in section 1(10)”

Substitute

“a condition specified in section 1(10)”.

37. Section 366 amended (group of small guarantee companies)

- (1) Section 366(1)(b), (2)(b) and (3)—

Repeal

“section 1(13)”

Substitute

“section 1(12A) and (13)”.

- (2) Section 366(4)—

Repeal

“another company”

Substitute

“another company or non-Hong Kong body corporate”.

- (3) Section 366(4) and (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,”.

38. Section 366A added

Part 9, Division 2, after section 366—

Add

“366A. Mixed group

- (1) For the purposes of this Part, if—
- (a) the holding company of a group of companies is a company;
 - (b) the group only consists of—

- (i) one or more bodies corporate specified in subsection (2); and
- (ii) one or more bodies corporate specified in subsection (3); and
- (c) the specified conditions are satisfied—
 - (i) in the first financial year of the holding company after the coming into operation of this section; or
 - (ii) in the financial year of the holding company that immediately precedes that first financial year,

the group is qualified as a mixed group for that first financial year, and every subsequent financial year, until it is disqualified under subsection (6) or (7).

- (2) A body corporate specified for the purposes of subsection (1)(b)(i) is—
 - (a) a small private company;
 - (b) a non-Hong Kong body corporate that would have been qualified as a small private company had it been incorporated under this Ordinance;
 - (c) an eligible private company; or
 - (d) a non-Hong Kong body corporate that would have been qualified as an eligible private company had it been incorporated under this Ordinance.
- (3) A body corporate specified for the purposes of subsection (1)(b)(ii) is—
 - (a) a small guarantee company; or

- (b) a non-Hong Kong body corporate that would have been qualified as a small guarantee company had it been incorporated under this Ordinance.
- (4) For the purposes of subsection (1)(c), a reference to specified conditions is a reference to—
 - (a) if the holding company is a small private company—any 2 of the conditions specified in section 1(8) of Schedule 3;
 - (b) if the holding company is an eligible private company—any 2 of the conditions specified in section 1(11) of that Schedule;
 - (c) if the holding company is a small guarantee company—the condition specified in section 1(13) of that Schedule.
 - (5) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the condition under subsection (1)(b), and the conditions specified in subsection (4)(a), (b) or (c), are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a mixed group for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (6) or (7).
 - (6) For the purposes of this Part, if, after a group of companies is qualified as a mixed group under subsection (1) or (5), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company and, for the financial year—

- (a) either—
 - (i) that other company is not a small private company, an eligible private company or a small guarantee company; or
 - (ii) that other body corporate would not have been qualified as a small private company, an eligible private company or a small guarantee company had it been incorporated under this Ordinance; or
 - (b) the specified conditions are not satisfied, the group is disqualified as a mixed group for the financial year, and every subsequent financial year, until it is qualified again under subsection (5).
- (7) For the purposes of this Part, if, after a group of companies is qualified as a mixed group under subsection (1) or (5), for 2 consecutive financial years of the holding company, either—
- (a) the condition under subsection (1)(b) is not satisfied; or
 - (b) the specified conditions are not satisfied, the group is also disqualified as a mixed group for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (5).
- (8) For the purposes of subsections (6)(b) and (7)(b), a reference to specified conditions is a reference to—
- (a) if the holding company is a small private company—any 2 of the conditions specified in section 1(9) of Schedule 3;

- (b) if the holding company is an eligible private company—any 2 of the conditions specified in section 1(12) of that Schedule;
- (c) if the holding company is a small guarantee company—the condition specified in section 1(14) of that Schedule.”.

39. Section 367 amended (financial year)

- (1) Section 367(1)—

Repeal

everything after “reference period and ends”

Substitute

“on—

- (a) subject to paragraph (b), the last day of that period; or
- (b) another date, within 7 days before, or after, the end of that period, as specified by the directors.”.

- (2) Section 367(2)—

Repeal

everything after “financial year and ends”

Substitute

“on—

- (a) subject to paragraph (b), the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined; or
- (b) another date, within 7 days before, or after, the end of that period, as specified by the directors.”.

40. Section 368 amended (accounting reference period)

(1) Section 368(1)—

Repeal

“For an existing company”

Substitute

“Subject to subsection (1A), for an existing company”.

(2) After section 368(1)—

Add

“(1A) For an existing company that was a dormant company at the beginning of the commencement date of Division 1 of Part 3 but has ceased to be a dormant company—

(a) subsection (1) does not apply; and

(b) the first accounting reference period begins on the date the company ceased to be a dormant company and ends on its primary accounting reference date.”.

41. Section 369 amended (primary accounting reference date)

(1) Section 369(1)(b)(ii)—

Repeal

“; or”

Substitute a semicolon.

(2) Section 369(1)(b)—

Repeal subparagraph (iii)**Substitute**

- “(iii) in the case where subparagraphs (i) and (ii) do not apply and the company is required by that section 111(1) to hold a general meeting, the date by which the meeting is required to be held; or
- (iv) in the case where subparagraphs (i) and (ii) do not apply, and the company was a dormant company at the beginning of the commencement date of Division 1 of Part 3 but has ceased to be a dormant company—
- (A) a date specified by the directors, which must fall within 18 months after the date the company ceased to be a dormant company; or
- (B) if no date is specified before the last day of the month in which the anniversary of the company’s incorporation first occurs after the company ceased to be a dormant company, the last day of the month.”.
- (3) Section 369(5)(a), Chinese text—

Repeal

“而指明的日期，而該日期須在有關日期前”

Substitute

“，在有關日期前指明的日期”。

42. Section 379 amended (directors must prepare financial statements)

- (1) Section 379(1)—

Repeal

“A company’s directors”

Substitute

“Subject to subsection (2), a company’s directors”.

- (2) Section 379(2)—
Repeal
“Despite subsection (1), if”
Substitute
“Subject to subsection (3A), if”.
- (3) Section 379(3)—
Repeal
“Subsection (2) does not apply”
Substitute
“Subsection (3A) applies”.
- (4) Section 379(3)(a)—
Repeal
“in the financial year; or”
Substitute
“at the end of the financial year;”.
- (5) Section 379(3)(b)(i)—
Repeal
“in the financial year”
Substitute
“at the end of the financial year”.
- (6) Section 379(3)(b)(iii)—
Repeal the full stop
Substitute
“; or”.

- (7) After section 379(3)(b)—

Add

“(c) if—

- (i) the company is a partially owned subsidiary of another body corporate at the end of the financial year; and
- (ii) all members agree in writing before the end of the financial year that consolidated statements will not be prepared for the financial year, and the agreement does not relate to any other financial year.”.

- (8) After section 379(3)—

Add

“(3A) If this subsection applies because of—

- (a) subsection (3)(a)—the directors must prepare for the financial year—
 - (i) statements that comply with sections 380 and 383; or
 - (ii) consolidated statements that comply with sections 380, 381 and 383; or
- (b) subsection (3)(b) or (c)—the directors must prepare for the financial year statements that comply with sections 380 and 383.”.

- (9) Section 379(4), (5) and (6)(a)—

Repeal

“(1) or (2)”

Substitute

“(1), (2) or (3A)”.

43. Section 380 amended (general requirements for financial statements)

Section 380—

Repeal subsection (8).

44. Section 383 amended (notes to financial statements to contain information on directors' emoluments etc.)

Section 383(1)(e)—

Repeal

“or another company in the same group of companies”.

45. Section 385 amended (place where register mentioned in section 384 must be kept)

Section 385(4)(b)(ii), English text—

Repeal

“registrar was kept”

Substitute

“register was kept”.

46. Section 388 amended (directors must prepare directors' report)

Section 388(3)(b)—

Repeal

“in the financial year”

Substitute

“at the end of the financial year”.

47. Section 390 amended (contents of directors' report: general)

(1) Section 390(3)—

Repeal

“This section”

Substitute

“Subject to subsection (4), this section”.

(2) After section 390(3)—

Add

“(4) If both of the conditions specified in subsection (5) are satisfied, this section has effect in relation to a directors’ report required to be prepared under section 388(2) as if a reference to the company in subsections (1)(b) and (2) were a reference to—

- (a) the company; and
- (b) the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

(5) The conditions are—

- (a) the company is a holding company of a subsidiary undertaking at the end of the financial year; and
- (b) subsection (6) is complied with in respect of a list of the name of every person who was a director of the subsidiary undertaking—
 - (i) during the financial year; or
 - (ii) during the period beginning with the end of the financial year and ending on the date of the report.

(6) The list of the names—

- (a) must, throughout the period specified in subsection (7), be—
 - (i) kept at the company’s registered office; and

- (ii) made available for inspection by the members free of charge during business hours; or
- (b) must be made available on the company's website throughout that period.
- (7) The period is one that—
 - (a) begins on the expiry of the day on which the company sends or provides a copy of the directors' report to the members in accordance with section 430 or 612(1)(b); and
 - (b) ends on the day on which a copy of the directors' report for the subsequent financial year is sent or provided to the members in accordance with section 430 or 612(1)(b).”.

48. Section 407 amended (auditor's opinion on other matters)

Section 407(1)(a) and (2)(a), Chinese text—

Repeal

“充份”

Substitute

“充分”.

49. Section 412 amended (rights in relation to information)

- (1) Section 412(9), Chinese text, definition of 有關連實體, paragraph (d)—

Repeal the full stop

Substitute a semicolon.

- (2) Section 412(9)—

Add in alphabetical order

“*officer* (高級人員), in relation to a subsidiary undertaking that is not a body corporate, means—

- (a) a member of the governing body of the undertaking; or
- (b) any other person involved in the management of the undertaking;”.

50. Section 415 amended (avoidance of provisions protecting auditor from liability)

- (1) Section 415(6)(a)—

Repeal

“; and”

Substitute a semicolon.

- (2) After section 415(6)(a)—

Add

“(ab) requiring the company to send a copy of a cessation statement to every member under section 423(2)(b); and”.

51. Section 432 amended (exception to section 430)

- (1) Section 432(2)(a), Chinese text—

Repeal

“周年大會”

Substitute

“成員大會”.

- (2) Section 432(2)(b), Chinese text—

Repeal

“周年大會” (wherever appearing)

Substitute

“成員大會”。

52. Section 436 amended (requirement in connection with publication of financial statements etc.)

Section 436(6)—

Repeal the definition of *non-statutory accounts***Substitute**

“*non-statutory accounts* (非法定帳目), in relation to a company—

(a) means—

(i) any statement of financial position or statement of comprehensive income, otherwise than as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company; or

(ii) accounts in any form, otherwise than as part of any financial statements prepared by the directors, purporting to be a statement of financial position or statement of comprehensive income for a group of companies consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company; but

(b) excludes any summary financial report;”.

53. Section 450 amended (Financial Secretary may make regulation regarding revision of financial statements etc.)

After section 450(4)—

Add

- “(4A) The regulations may also provide that—
- (a) a contravention of a provision in relation to revised financial statements is an offence; and
 - (b) the maximum penalty that may be prescribed—
 - (i) for such an offence of which a person is convicted on indictment, is a fine of \$150,000 and imprisonment for 2 years; and
 - (ii) for such an offence of which a person is summarily convicted, is a fine at level 5 and imprisonment for 6 months.”.

54. Section 452 amended (Financial Secretary may make other regulations)

Section 452(1)—

Repeal

“section 380(8)(a)”

Substitute

“the definition of *accounting standards* in section 357(1)”.

55. Section 481 amended (minutes of directors’ meetings)

(1) Section 481, heading—

Repeal

“meetings”

Substitute

“meetings and directors’ resolutions”.

(2) Section 481(1)—

Repeal

everything after “cause”

Substitute

“the following to be recorded—

- (a) minutes of all proceedings at meetings of its directors; and
- (b) all resolutions passed by its directors without a meeting.”.

- (3) Section 481(2)—

Repeal

everything after “10 years”

Substitute

“from—

- (a) the date of the meeting; or
- (b) the date of the passing of the resolution without a meeting.”.

- (4) After section 481(3)—

Add

- “(4) This section does not apply to a resolution passed without a meeting before the commencement date of section 55 of the Companies (Amendment) Ordinance 2018 (of 2018).”.

56. Section 482 amended (minutes as evidence)

Section 482(2)—

Repeal

“minutes have been recorded in accordance with section 481 of the proceedings at a meeting of directors,”

Substitute

“the proceedings at a meeting of directors are evidenced by minutes under subsection (1),”.

57. Section 517 amended (payment for loss of office)

After section 517(6)—

Add

“(7) In this section—

subsidiary undertaking (附屬企業) has the same meaning as in Part 9.”.

58. Section 525 amended (exception for small payment)

(1) Section 525(3)—

Repeal

“A subsidiary of a company”

Substitute

“A subsidiary of a company (*excepted subsidiary*)”.

(2) Section 525(3)—

Repeal

“made by the company, or the subsidiary making the payment,”

Substitute

“made by the excepted subsidiary or a subsidiary of the excepted subsidiary”.

(3) Section 525(3), Chinese text—

Repeal

“付款附屬公司作出”

Substitute

“例外附屬公司作出”。

- (4) After section 525(3)—

Add

“(4) Subsection (3) applies in relation to a loss of office that occurs on or after the commencement date of section 58 of the Companies (Amendment) Ordinance 2018 (of 2018).

(5) Subsection (3), as in force immediately before the commencement date of section 58 of the Companies (Amendment) Ordinance 2018 (of 2018), continues to apply in relation to a loss of office specified in that subsection that occurred before that commencement date.”.

59. Section 555 amended (company’s duty to notify auditor of proposed written resolution)

Section 555(1), English text—

Repeal

“everyone”

Substitute

“each”.

60. Section 559 amended (company’s duty to notify members and auditor that written resolution has been passed)

Section 559(1)(b), English text—

Repeal

“everyone”

Substitute

“each”.

61. Section 575 amended (duty to give notice of general meeting to auditor)

Section 575(1), English text—

Repeal

“everyone”

Substitute

“each”.

62. Section 588 amended (general rules on votes)

Section 588(3)(a)(ii)—

Repeal

“held by that member”

Substitute

“in respect of which the proxy is appointed”.

63. Section 610 amended (requirement to hold annual general meeting)

Section 610(2)(a)(i) and (b)(i)—

Repeal

“anniversary”

Substitute

“first anniversary”.

64. Section 619 amended (place where records must be kept)

(1) Section 619(1)—

Repeal

“the records mentioned in section 618”

Substitute

“a specified record”.

- (2) Section 619(2)—

Repeal

“the records mentioned in section 618 are kept”

Substitute

“a specified record is kept”.

- (3) Section 619(2)—

Repeal

“after the records are first”

Substitute

“after the specified record is first”.

- (4) Section 619(3)—

Repeal

“the records mentioned in section 618 are kept”

Substitute

“a specified record is kept”.

- (5) Section 619—

Repeal subsection (4)

Substitute

- “(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.”.
- (6) Section 619(6), English text, definition of *prescribed*—
Repeal the full stop
Substitute a semicolon.
- (7) Section 619(6)—
Add in alphabetical order
 “*specified record* (指明紀錄) means—
- (a) the minutes recorded in accordance with section 481(1) of proceedings at a meeting of directors held on or after the commencement date of section 64 of the Companies (Amendment) Ordinance 2018 (of 2018);

- (b) the resolutions passed by directors without a meeting on or after the commencement date of section 64 of the Companies (Amendment) Ordinance 2018 (of 2018) and recorded in accordance with section 481(1);
- (c) the written record mentioned in section 483(1) of a decision taken by the sole director of a private company on or after the commencement date of section 64 of the Companies (Amendment) Ordinance 2018 (of 2018); or
- (d) the copy of a resolution, minutes or written record mentioned in section 618(1).”.

65. Section 621 amended (records as evidence of resolutions etc.)

- (1) Section 621(2)—

Repeal

“of a general meeting”

Substitute

“of a general meeting kept under section 618(1)(b)”.

- (2) Section 621(2), Chinese text, before “該紀錄是”—

Add

“則”.

- (3) Section 621(3)—

Repeal

“the record of the minutes of proceedings of a general meeting of a company is kept under section 618(1)(b),”

Substitute

“the proceedings of a general meeting of a company are evidenced by minutes under subsection (2),”.

66. Section 622 amended (registration of and requirements relating to certain resolutions, etc.)

Section 622(1)(f)—

Repeal

“360(1)(a), (2)(a)(i), (2)(b)(i) or (2)(c)(i)”

Substitute

“360(1)(a) and (2)(a)”.

67. Section 650 amended (particulars of company secretaries to be registered)

Section 650(1)(a)(ii), Chinese text—

Repeal

“通常住址”

Substitute

“通訊地址”.

68. Section 659 amended (requirement to disclose company name, etc.)

Section 659(1)(c), Chinese text—

Repeal

“住”

Substitute

“往”.

69. Section 678 amended (interpretation)

(1) Section 678(1)—

Repeal

“another company”

Substitute

“another body corporate”.

(2) Section 678(1)(a), (b) and (c)—

Repeal

“other company”

Substitute

“other body corporate”.

70. Section 681 amended (horizontal amalgamation)

Section 681(1)—

Repeal

“a company”

Substitute

“a body corporate”.

71. Section 700 amended (offeror may be required to buy out minority shareholders)

Section 700(2)(b)—

Repeal

“in the company”

Substitute

“of that class”.

72. Section 761 amended (conditions for granting application)

(1) Section 761(2)(b)—

Repeal

everything after “section 752(1),”

Substitute

“the Government has no objection to the restoration;”.

- (2) Section 761(2)(c)—

Repeal the full stop**Substitute**

“; and”.

- (3) After section 761(2)(c)—

Add

“(d) that the Government’s costs, expenses and liabilities in dealing with the property or right during the period of dissolution, or in connection with the proceedings on the application, have been paid or reimbursed by the applicant.”.

- (4) Section 761—

Repeal subsection (3).

73. Section 773 amended (effect of restoration on bona vacantia property or right)

Section 773(1)—

Repeal

“section 752(1),”

Substitute

“section 292 of the predecessor Ordinance or section 752(1),”.

74. Section 774 amended (interpretation)

Section 774(1), definition of *required details*, paragraph (a)—

Repeal

“address”

Substitute

“address in Hong Kong”.

75. Section 776 amended (certain non-Hong Kong companies must apply for registration)

Section 776(5)—

Repeal

“Roman script”

Substitute

“characters of the Latin alphabet”.

76. Section 777 amended (registration of non-Hong Kong company)

Section 777(2)(a)—

Repeal

“Roman script”

Substitute

“characters of the Latin alphabet”.

77. Section 778 amended (company must notify Registrar of addition, change or cessation of name or translation of name)

Section 778—

- (a) subsection (1);
- (b) subsection (3)(b)(i);
- (c) subsection (5)(a);
- (d) subsection (7)(b)(i);
- (e) subsection (9)—

Repeal

“Roman script” (wherever appearing)

Substitute

“characters of the Latin alphabet”.

78. Section 789 amended (company must deliver accounts for registration)

(1) Section 789(4)—

Repeal

“an officer or”

Substitute

“a responsible person or an”.

(2) Section 789(4)—

Repeal

“the officer”

Substitute

“the responsible person”.

(3) Section 789(5)—

Repeal

“an officer or”

Substitute

“a responsible person or an”.

(4) Section 789(5)—

Repeal

“the officer”

Substitute

“the responsible person”.

79. Section 792 repealed (non-Hong Kong company must state names, place of incorporation, etc.)

Section 792—

Repeal the section.

80. Section 803 amended (service of process or notice)

Section 803(1)(b)—

Repeal

“address”

Substitute

“address in Hong Kong”.

81. Sections 805A and 805B added

Part 16, Division 9, after section 805—

Add

“805A. Requirement to disclose non-Hong Kong company’s name etc.

- (1) The Financial Secretary may make regulations to require non-Hong Kong companies—
 - (a) to display prescribed information in prescribed locations;
 - (b) to state prescribed information in prescribed descriptions of documents or communications; and
 - (c) to provide prescribed information on request to those they deal with in the course of their business.

- (2) The regulations—
 - (a) may in prescribed circumstances require disclosure of the name of a non-Hong Kong company;
 - (b) may make provision as to the manner in which any prescribed information is to be displayed, stated or provided; and
 - (c) may exempt a non-Hong Kong company from any requirement of the regulations made under subsection (1).
- (3) The regulations may provide that, for the purposes of any requirement to disclose a non-Hong Kong company's name, any variation between a word or words required to be part of the name and a permitted abbreviation of that word or those words (or vice versa) is to be disregarded.

805B. Criminal consequences of failure to make required disclosures

Regulations made under section 805A may provide that—

- (a) if a non-Hong Kong company contravenes any of the regulations made under that section, an offence is committed by—
 - (i) the company; and
 - (ii) every responsible person of the company;
- (b) if a person who is acting on behalf of the company contravenes any of the regulations made under that section, an offence is committed by that person; and

(c) a person who commits an offence mentioned in paragraph (a) or (b) is liable to a fine not exceeding level 3.”.

82. Section 810 amended (Registrar must not register without resolution declaring amount of guarantee)

Section 810(2)(b)—

Repeal

“; or”

Substitute

“; and”.

83. Section 837 amended (member or debenture holder may require hard copy)

Before section 837(1)—

Add

“(1A) This section applies if a document or information is authorized or required to be sent or supplied by a company to a member or debenture holder under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).”.

84. Section 877 amended (magistrate’s warrants)

Section 877(1), English text—

Repeal

“premise”

Substitute

“premises”.

85. Schedule 1 amended (parent undertakings and subsidiary undertakings)

(1) Schedule 1—

Repeal

“[ss. 16 &”

Substitute

“[ss. 357 &”.

(2) Schedule 1, section 1—

Renumber the section as section 1(1).

(3) Schedule 1, Chinese text, section 1(1), definition of *股份*, paragraph (c)(ii)—

Repeal the full stop**Substitute a semicolon.**

(4) Schedule 1, section 1(1)—

Add in alphabetical order

“*accounting standards* (會計準則) has the same meaning as in Part 9;”.

(5) Schedule 1, after section 1(1)—

Add

“(2) In this Schedule, a reference to accounting standards applicable to any financial statements of a parent undertaking is a reference to accounting standards as are, in accordance with their terms, relevant to the parent undertaking’s circumstances and to the financial statements.”.

(6) Schedule 1—

Repeal section 2

Substitute

“2. Parent undertaking

- (1) For the purposes of 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.
- (2) For the purposes of subsection (1)(a), an undertaking has control over another undertaking if it has the power to govern the financial and operating policies of that other undertaking so as to obtain benefits from that other undertaking’s activities.
- (3) For the purposes of subsection (1)(a), an undertaking is presumed, unless the contrary is proved, to have control over another undertaking if—
 - (a) it holds a majority of the voting rights in that other undertaking;
 - (b) it has the power to exercise a majority of the voting rights in that other undertaking by reason of an agreement with other members of that other undertaking;
 - (c) it has the right to appoint or remove a majority of the board of directors, or an equivalent governing body, of that other undertaking; or

- (d) it has the power to cast a majority of votes at meetings of the board of directors, or an equivalent governing body, of that other undertaking.
- (4) Subsection (3) does not limit subsection (2).
 - (5) For the purposes of subsection (3), a reference to the voting rights in an undertaking is—
 - (a) in the case of an undertaking having a share capital, a reference to the rights given to the members in respect of their shares to vote at general meetings of the undertaking on all, or substantially all, matters; or
 - (b) in the case of an undertaking not having a share capital—
 - (i) if the undertaking is required to hold general meetings at which matters are decided by the exercise of voting rights—a reference to the rights given to the members to vote at the general meetings on all, or substantially all, matters; or
 - (ii) if the undertaking is not required to hold such general meetings—a reference to the rights under the undertaking's constitution to direct the undertaking's overall policy or to alter the terms of that constitution.
 - (6) For the purposes of subsection (3)(c), a reference to the right to appoint or remove a majority of a board of directors or an equivalent governing body is—
 - (a) a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; or

- (b) a reference to the right to appoint or remove members of the body holding a majority of the voting rights at meetings of the body on all, or substantially all, matters.
- (7) For the purposes of subsection (6)—
- (a) in determining whether an undertaking has the right to appoint or remove a director or a member of the equivalent governing body, a right that is exercisable only with another person's consent is to be disregarded unless no other person has the right; and
 - (b) an undertaking has the right to appoint a director or a member of the equivalent governing body if—
 - (i) a person's appointment as a director or a member follows necessarily from that person's appointment as a director or a member in relation to the undertaking; or
 - (ii) the directorship or membership is held by the undertaking itself.”.

86. Schedule 3 amended (specified qualifying conditions for sections 361 to 366)

- (1) Schedule 3, heading—

Repeal

“**366**”

Substitute

“**366A**”.

- (2) Schedule 3—

Repeal

“[ss. 360, 361, 362, 363, 364, 365, 366 &”

Substitute

“[ss. 361, 362, 363, 364, 365, 366, 366A &”.

- (3) Schedule 3, before section 1—

Add

“1A. Interpretation

In this Schedule—

non-Hong Kong body corporate (非香港法人團體) means a body corporate incorporated outside Hong Kong.”.

- (4) Schedule 3, section 1—

Repeal subsection (7)

Substitute

“(7) The conditions specified for the purposes of section 364(1), (2), (3), (4) and (5) are—

- (a) that each company in the group is qualified as a small private company for the financial year; and
- (b) that each non-Hong Kong body corporate in the group would have been qualified as a small private company for the financial year had it been incorporated under this Ordinance.”.

- (5) Schedule 3, section 1(8)—

Repeal

“and (3)”

Substitute

“and (3) and section 366A(4)(a)”.

- (6) Schedule 3, section 1(9)—

Repeal

“and (5)”

Substitute

“and (5) and section 366A(8)(a)”.

- (7) Schedule 3, section 1—

Repeal subsection (10)

Substitute

“(10) The conditions specified for the purposes of section 365(1), (2), (3), (4) and (5) are—

- (a) that each company in the group is qualified as an eligible private company for the financial year; and
- (b) that each non-Hong Kong body corporate in the group would have been qualified as an eligible private company for the financial year had it been incorporated under this Ordinance.”.

- (8) Schedule 3, section 1(11)—

Repeal

“and (3)”

Substitute

“and (3) and section 366A(4)(b)”.

- (9) Schedule 3, section 1(12)—

Repeal

“and (5)”

Substitute

“and (5) and section 366A(8)(b)”.

- (10) Schedule 3, after section 1(12)—

Add

“(12A) The conditions specified for the purposes of section 366(1), (2), (3), (4) and (5) are—

- (a) that each company in the group is qualified as a small guarantee company for the financial year; and
- (b) that each non-Hong Kong body corporate in the group would have been qualified as a small guarantee company for the financial year had it been incorporated under this Ordinance.”.

- (11) Schedule 3, section 1—

Repeal subsection (13)

Substitute

“(13) The condition specified for the purposes of section 366(1), (2) and (3) and section 366A(4)(c) is that the aggregate amount of the group’s total revenue for the financial year does not exceed \$25 million.”.

- (12) Schedule 3, section 1—

Repeal subsection (14)

Substitute

“(14) The condition specified for the purposes of section 366(4) and (5) and section 366A(8)(c) is that the aggregate amount of the group’s total revenue for the financial year does not exceed \$25 million.”.

- (13) Schedule 3, section 2(1)—

Repeal

“(13)(b) and (14)(b)”

Substitute

“(13) and (14)”.

- (14) Schedule 3, section 2(2)—

Repeal

“1(11) and (13)(b)”

Substitute

“(11) and (13)”.

- (15) Schedule 3, section 2(2)(a)—

Repeal

everything after “may be) of each”

Substitute

“member in the group, as would be reflected in the member’s annual financial statements or annual consolidated financial statements for the financial year if the group were qualified as a group of small private companies, eligible private companies or small guarantee companies, or a mixed group (as the case may be); and”.

- (16) Schedule 3, section 2(2)(b)—

Repeal

“companies”

Substitute

“members”.

- (17) Schedule 3, section 2(3)—

Repeal

“1(12) and (14)(b)”

Substitute

“(12) and (14)”.

(18) Schedule 3, section 2(3)(a)—

Repeal

“company in the group, as reflected in the company’s”

Substitute

“member in the group, as reflected in the member’s”.

(19) Schedule 3, section 2(3)(b)—

Repeal

“companies”

Substitute

“members”.

(20) Schedule 3, section 2(4)—

Repeal

“each company”

Substitute

“each member”.

(21) Schedule 3, section 2(5)—

Repeal

“a company’s employees”

Substitute

“the employees of a company or a member in a group”.

(22) Schedule 3, section 2(5)—

Repeal

“the company’s employees as”

Substitute

“the employees of the company or the member in the group as”.

87. Schedule 4 amended (accounting disclosures)

(1) Schedule 4, Part 1, after section 3(2)—

Add

“(3) In this section—

parent undertaking (母企業) has the same meaning as in Part 9.”.

(2) Schedule 4, Part 1, section 4(a)—

Repeal

“within the meaning of section 380”

Substitute

“as defined by section 357(1)”.

88. Schedule 5 amended (contents of directors’ report: business review)

(1) Schedule 5, English text, section 5, definition of *key performance indicators*—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 5, section 5—

Add in alphabetical order

“*subsidiary undertaking* (附屬企業) has the same meaning as in Part 9.”.

89. Schedule 7 amended (offences in respect of which proceedings not instituted under certain conditions)

Schedule 7—

Repeal item 7.

Part 3

Amendments to Companies (Disclosure of Company Name and Liability Status) Regulation

90. Companies (Disclosure of Company Name and Liability Status) Regulation amended

The Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622 sub. leg. B) is amended as set out in this Part.

91. Section 2 amended (interpretation)

Section 2(1)—

Repeal the definition of *registered name*

Substitute

“*registered name* (註冊名稱), in relation to a company, means the English name or the Chinese name, if applicable, by which the company is registered under the Ordinance;”.

92. Section 4A added

After section 4—

Add

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

93. Section 7 amended (offences)

- (1) Section 7(1)—
- Repeal**
“4 or”
- Substitute**
“4, 4A or”.
- (2) Section 7(2)(a)—
- Repeal**
“section 4(a)”

Substitute

“section 4(a), 4A(1)(b) or (2)(b)”.

- (3) Section 7(2)(b) and (c)—

Repeal

“section 4(b)”

Substitute

“section 4(b), 4A(1)(b) or (2)(b)”.

- (4) Section 7(2)(d)—

Repeal

“section 4(c)”

Substitute

“section 4(c), 4A(1)(c) or (2)(c)”.

Part 4

Amendment to Companies (Accounting Standards (Prescribed Body)) Regulation

94. Companies (Accounting Standards (Prescribed Body)) Regulation amended

The Companies (Accounting Standards (Prescribed Body)) Regulation (Cap. 622 sub. leg. C) is amended as set out in this Part.

95. Section 2 amended (prescribed body)

Section 2—

Repeal

“section 380(8)(a)”

Substitute

“the definition of *accounting standards* in section 357(1)”.

Part 5

Amendments to Companies (Directors' Report) Regulation

96. Companies (Directors' Report) Regulation amended

The Companies (Directors' Report) Regulation (Cap. 622 sub. leg. D) is amended as set out in this Part.

97. Section 2 amended (interpretation)

(1) Section 2, English text, definition of *specified undertaking*, paragraph (c)—

Repeal the full stop

Substitute a semicolon.

(2) Section 2—

Add in alphabetical order

“*parent undertaking* (母企業) has the same meaning as in Part 9 of the Ordinance;

subsidiary undertaking (附屬企業) has the same meaning as in Part 9 of the Ordinance.”.

98. Section 3 amended (directors' interests)

Section 3(4), definition of *shares*—

Repeal

“section 1”

Substitute

“section 1(1)”.

Part 6

Amendments to Companies (Summary Financial Reports) Regulation

- 99. Companies (Summary Financial Reports) Regulation amended**
The Companies (Summary Financial Reports) Regulation (Cap. 622 sub. leg. E) is amended as set out in this Part.
- 100. Section 2 amended (interpretation)**
Section 2(1)—
Add in alphabetical order
“*subsidiary undertaking* (附屬企業) has the same meaning as in Part 9 of the Ordinance;”.
- 101. Section 3 amended (form and contents of summary financial report: general)**
After section 3(3)—
Add
“(4) In this section, a reference to a holding company is to be construed in accordance with section 357(4)(b) of the Ordinance.”.
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Part 7

Amendments to Companies (Revision of Financial Statements and Reports) Regulation

102. Companies (Revision of Financial Statements and Reports) Regulation amended

The Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622 sub. leg. F) is amended as set out in this Part.

103. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*subsidiary undertaking* (附屬企業) has the same meaning as in Part 9 of the Ordinance;”.

104. Section 19 amended (rights of person preparing auditor’s report on revised financial statements)

(1) Section 19(1)—

Repeal

“Section 411 of the Ordinance applies”

Substitute

“Sections 411 and 575 of the Ordinance apply”.

(2) Section 19(1), English text—

Repeal

“as it applies”

Substitute

“as they apply”.

105. Section 20 amended (offences relating to section 19)

(1) Section 20(4)—

Repeal

“Subject to subsection (4A), a person”

Substitute

“A person”.

(2) Section 20(4)(a)—

Repeal

“12 months”

Substitute

“2 years”.

(3) Section 20—

Repeal subsection (4A).

Part 8

Amendments to Companies (Disclosure of Information about Benefits of Directors) Regulation

106. Companies (Disclosure of Information about Benefits of Directors) Regulation amended

The Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap. 622 sub. leg. G) is amended as set out in this Part.

107. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(2).

(2) Before section 2(2)—

Add

“(1) In this Regulation—

parent undertaking (母企業) has the same meaning as in Part 9 of the Ordinance;

subsidiary undertaking (附屬企業) has the same meaning as in Part 9 of the Ordinance.”.

(3) Section 2(2)(c)—

Repeal

“section 1”

Substitute

“section 1(1)”.

Part 9

Amendments to Companies (Model Articles) Notice

108. Companies (Model Articles) Notice amended

The Companies (Model Articles) Notice (Cap. 622 sub. leg. H) is amended as set out in this Part.

109. Schedule 1 amended (model articles for public companies limited by shares)

(1) Schedule 1—

Repeal article 87

Substitute

“87. Alteration of share capital

(1) Subject to paragraph (2), the company may alter its share capital in any one or more of the ways set out in section 170 of the Ordinance.

(2) An alteration made in the way set out in section 170(2)(c), (d), (e) or (f) of the Ordinance may only be made by ordinary resolution.”

(2) Schedule 1, article 105(3), definition of *required sanction*—

Repeal

“the Ordinance”

Substitute

“the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)”.

110. Schedule 2 amended (model articles for private companies limited by shares)

(1) Schedule 2—

Repeal article 69

Substitute

“69. Alteration of share capital

(1) Subject to paragraph (2), the company may alter its share capital in any one or more of the ways set out in section 170(2)(a), (b), (c), (d), (e) and (f)(i) of the Ordinance, and subsections (3), (4), (5), (6), (7) and (8) of that section apply accordingly.

(2) An alteration made in the way set out in section 170(2)(c), (d), (e) or (f)(i) of the Ordinance may only be made by ordinary resolution.”.

(2) Schedule 2, article 84(3), definition of *required sanction*—

Repeal

“the Ordinance”

Substitute

“the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)”.

Part 10

Amendments to Companies (Non-Hong Kong Companies) Regulation

- 111. Companies (Non-Hong Kong Companies) Regulation amended**
The Companies (Non-Hong Kong Companies) Regulation (Cap. 622 sub. leg. J) is amended as set out in this Part.
- 112. Section 3 amended (particulars to be contained in application for registration)**
Section 3(1)(a)—
Repeal
“Roman script”
Substitute
“characters of the Latin alphabet”.
- 113. Section 5 amended (company may include certified translation of domestic name: application for registration)**
(1) Section 5(a)—
Repeal
“Roman script”
Substitute
“characters of the Latin alphabet”.
- (2) Section 5(b)—
Repeal
“and none of which is in Roman script”
Substitute
“none of which is in characters of the Latin alphabet”.

- (3) Section 5(d), English text—

Repeal

“and”.

114. Section 6 amended (company may include certified translation of domestic name: change of domestic name)

- (1) Section 6(1)(a)—

Repeal

“Roman script”

Substitute

“characters of the Latin alphabet”.

- (2) Section 6(1)(b)—

Repeal

“and none of which is in Roman script”

Substitute

“none of which is in characters of the Latin alphabet”.

- (3) Section 6(1)(d), English text—

Repeal

“and”.

- (4) Section 6(2)—

Repeal

“Roman script”

Substitute

“characters of the Latin alphabet”.

115. Section 9 amended (particulars to be contained in annual return)

Section 9(1)(h)(i)—

Repeal

“address”

Substitute

“address in Hong Kong”.

Explanatory Memorandum

The Companies Ordinance (Cap. 622) (*Ordinance*) provides for a modern statutory framework for the incorporation and operation of companies in Hong Kong and came into operation in March 2014.

2. The main purposes of this Bill are to improve the clarity and operation of the Ordinance and its subsidiary legislation and to further facilitate business in Hong Kong.
3. The Bill proposes to amend the Ordinance and its subsidiary legislation mainly to—
 - (a) improve the operation of the accounts provisions;
 - (b) expand the types of companies within the reporting exemption; and
 - (c) make certain miscellaneous and related amendments.
4. Clause 6 repeals section 16 of the Ordinance, and clause 85 amends Schedule 1 to the Ordinance, to update the meaning of *parent undertaking*.
5. Clause 7 amends section 76 of the Ordinance to allow a company's articles to be in electronic form.
6. Clause 8 substitutes section 81 of the Ordinance to clarify that if a company has both an English name and a Chinese name, both names must be stated in its articles.
7. Clause 9 amends section 88 of the Ordinance 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.

8. Clause 10 amends section 124 of the Ordinance 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.
9. Clauses 11 to 14 and 17 amend sections 142, 171, 173, 175 and 184 of the Ordinance respectively to specify that the statement of capital should report the share capital position immediately after the relevant change.
10. Clauses 15, 16, 18 and 19 amend sections 180, 182, 188 and 190 of the Ordinance 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.
11. Clause 20 amends section 201 of the Ordinance to clarify that the obligation to give particulars of class rights in the statement of capital only arises if the issued share capital of a company is divided into different classes of shares.
12. Clauses 20(2), 21 to 26, 29, 41(3), 48, 51, 58(3), 65(2), 67 and 68 make textual amendments to the Chinese text of sections 201, 224, 225, 227, 230, 232, 270, 337, 369, 407, 432, 525, 621, 650 and 659 of the Ordinance respectively. Clauses 31, 45, 59, 60 and 61 also make textual amendments to the English text of sections 356, 385, 555, 559 and 575 of the Ordinance respectively.
13. Clause 27 repeals section 275(3) of the Ordinance as the provision is unnecessary.

14. Clause 28 amends section 316 of the Ordinance to provide that the return of allotment does not need to state the name and address of an allottee of bearer debentures.
15. Clause 30 amends section 351 of the Ordinance to provide for an exemption from the requirement to notify the Registrar of Companies if the relevant change only relates to a change of the address of a company's registered office or the address of a registered non-Hong Kong company's principal place of business in Hong Kong.
16. Clauses 32 to 44, 46, 47, 49, 50, 52, 53 and 54 contain amendments to various accounting and auditing provisions in Part 9 of the Ordinance.
17. Clauses 32 to 38 contain new provisions or amendments to the existing provisions to facilitate enterprises, mainly the small and medium-sized ones, to take advantage of the reporting exemption provisions, i.e. provisions that allow companies to adopt simplified accounting and financial reporting. The types of companies benefiting from the reporting exemption is expanded to include the holding company of a group of companies with members that are not incorporated in Hong Kong as well as the holding company of a mixed group. Those holding companies will benefit from the simplified accounting and financial reporting requirements. Moreover, a holding company of a group of companies may also be a parent undertaking that is a company.
18. Clauses 32, 39 to 44, 46, 47, 49, 50, 52 and 53 contain technical amendments to streamline the operation of the accounting and financial reporting requirements, and to facilitate compliance with them. Those include—

- (a) providing for alternative means to disclose the names of directors of subsidiary undertakings in a holding company's directors' report;
 - (b) providing for an option for a holding company that is also a wholly owned subsidiary to prepare consolidated financial statements instead of its own statements; and
 - (c) aligning the penalty provisions relating to financial statements in the Ordinance with those relating to revised financial statements in its subsidiary legislation.
- 19. Clause 55 amends section 481 of the Ordinance to require that a company must also cause to be recorded resolutions passed by directors without a meeting.
- 20. Clause 56 amends section 482 of the Ordinance to clarify the matter relating to company records as evidence of the proceedings at meetings of directors.
- 21. Clause 58 amends section 525 of the Ordinance on the "small payment" exception to the prohibition on payments for loss of office of a director to make it clear what payments are not aggregated for the purpose of calculating the total amount of the small payment.
- 22. Clauses 62 to 66 contain technical amendments or amendments to clarify certain provisions in Part 12 of the Ordinance which deals with company administration and procedure. Clauses 62, 63 and 66 make textual amendments to sections 588, 610 and 622 of the Ordinance respectively. Clause 64 amends section 619 of the Ordinance to require a company to keep the minutes of proceedings at directors' meetings and the resolutions passed by directors without a meeting at its registered office or a

prescribed place. Clause 65 amends section 621 of the Ordinance to clarify the matter relating to company records as evidence of the proceedings of a general meeting.

23. Clauses 69, 70 and 71 contain amendments to clarify certain provisions (i.e. sections 678, 681 and 700) in Part 13 of the Ordinance which deals with arrangements, horizontal amalgamations and compulsory share acquisitions in takeovers and share buy-backs.
24. Clauses 69 and 70 clarify the intention that the holding company is not required to be incorporated in Hong Kong for a horizontal amalgamation. 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 of the class.
25. Clause 72 amends section 761 of the Ordinance to modify the conditions for granting applications for administrative restoration of companies.
26. Clause 73 amends section 773 of the Ordinance to expressly provide for the power of the Government to dispose of any property or right vested in it as *bona vacantia* under section 292 of the previous Companies Ordinance (Cap. 32).
27. Clauses 74 to 81 amend the provisions in Part 16 of the Ordinance which relates to non-Hong Kong companies.
28. Clauses 74 and 80 amend sections 774 and 803 of the Ordinance respectively to clarify that an authorized representative of a non-Hong Kong company must have an address in Hong Kong. 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.

29. Clauses 79 and 81 are to align the requirements for non-Hong Kong companies with those for Hong Kong companies on the disclosure of names, by repealing section 792 of the Ordinance and adding new sections 805A and 805B to the Ordinance to empower the Financial Secretary to make regulations for non-Hong Kong companies relating to the disclosure of company names and the relevant offences.
30. Clause 85 updates the meaning of *parent undertaking* in Schedule 1 to the Ordinance which is related to the requirement for a holding company to prepare consolidated financial statements under Part 9 of the Ordinance, so as to accord with the latest accounting standards issued by the Hong Kong Institute of Certified Public Accountants. Clauses 57, 87 and 88 amends section 517 of, and Schedules 4 and 5 to, the Ordinance, and clauses 97, 100, 103 and 107 amend various pieces of subsidiary legislation under the Ordinance, to provide for related amendments.
31. Clause 86 amends Schedule 3 to the Ordinance (which sets out the conditions for companies to qualify for the reporting exemption) by reference to the expanded types of companies eligible for the reporting exemption. That relates to paragraph 17.
32. Clause 89 repeals item 7 of Schedule 7 to the Ordinance.
33. Clauses 91, 92 and 93 amend the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622 sub. leg. B) 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. Moreover, if a company registered by both an English name and a Chinese name displays its English registered name and intends to display its name in Chinese, the company must display its Chinese registered name, and vice versa.

34. Clause 101 amends the Companies (Summary Financial Reports) Regulation (Cap. 622 sub. leg. E) to clarify that a reference to a holding company is to be construed in accordance with section 357(4)(b) of the Ordinance as added by clause 32.
35. Clauses 104 and 105 amend sections 19 and 20 of the Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622 sub. leg. F) 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 a general meeting of the company. Clause 105 aligns the penalty provision regarding revised financial statements with that regarding the original financial statements.
36. Clauses 109 and 110 contain amendments to the Companies (Model Articles) Notice (Cap. 622 sub. leg. H) to clarify that an ordinary resolution of a company is required only for certain types of alteration of the share capital of the company.
37. Clause 115 amends the Companies (Non-Hong Kong Companies) Regulation (Cap. 622 sub. leg. J) 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.