

Standing Committee on Company Law Reform

The Thirty-Fifth Annual Report

2018 / 2019

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PREFACE

(i)

Terms of Reference of the Standing Committee on Company Law Reform

- (1) To advise the Financial Secretary on amendments to the Companies Ordinance and the Companies (Winding Up and Miscellaneous Provisions) Ordinance as and when experience shows them to be necessary.
- (2) To report annually to the Financial Secretary on those amendments to the Companies Ordinance and the Companies (Winding Up and Miscellaneous Provisions) Ordinance that are under consideration from time to time by the Standing Committee.
- (3) To advise the Financial Secretary on amendments required to the Securities and Futures Ordinance on matters relating to corporate governance and shareholders' protection.

(ii)

Membership of the Standing Committee for 2018/2019

Chairman: Mr John SCOTT, S.C., J.P.

Members: Mr Bruno ARBOIT
Ms Linda CHAN Ching-fan, S.C.
Mr Clement CHAN Kam-wing
Ms Bonnie CHAN Yi-ting
Ms Christine CHUNG Wai-yin (from 1.2.2019)
Professor David DONALD (up to 31.1.2019)
Mr David FU Yat-hung
Mr David KIDD
Mr Robert LEE Wai-wang
Professor LOW Chee-keong (from 1.2.2019)

Dr Lewis LUK Tei, J.P.
Ms Gillian MELLER
Mr Albert NG
Mr Keith POGSON
Mrs Natalia SENG SZE Ka-mee
Ms Cynthia TANG Yuen-shun
Mr Bernie TING Wai-cheung
Ms Wendy YUNG Wen-yee (up to 31.1.2019)

**Ex-Officio
Members :**

Ms Winnie NG, J.P.
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Ms Ada CHUNG, J.P.
Registrar of Companies

Ms Phyllis MCKENNA
Official Receiver

Dr Stefan LO
Senior Assistant Law Officer (Civil Law) (Ag.)
Department of Justice

Mr Stefan GANNON, J.P.
Commissioner, Resolution Office
Hong Kong Monetary Authority

Mr Andrew YOUNG (up to 30.1.2019)
Chief Counsel, Legal Services Division
Securities and Futures Commission

Ms Annabel LEE (from 31.1.2019)
Deputy Chief Counsel, Legal Services Division
Securities and Futures Commission

Mr David GRAHAM
Chief Regulatory Officer and Head of Listing
Hong Kong Exchanges and Clearing Limited

Secretary: Ms Ellen CHAN

(iii)

Information Papers circulated during 2018/2019

Companies (Amendment) (No. 2) Ordinance 2018	-	21.12.2018
Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation	-	15.03.2019

REPORT

The Standing Committee on Company Law Reform (“SCCLR”) was formed in 1984. It advises the Financial Secretary (“FS”) on amendments to the Companies Ordinance (Chapter 622) (“CO”) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) (“CWUMPO”), as well as on amendments to the Securities and Futures Ordinance (Chapter 571) on matters relating to corporate governance and shareholders’ protection. The SCCLR reports annually to the FS through the Secretary for Financial Services and the Treasury (“SFST”) on amendments that are under consideration.

2. From 1 April 2018 to 31 March 2019, the SCCLR received two Information Papers from the Government on the Companies (Amendment) (No. 2) Ordinance 2018 and the Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members’ Limited Liability) Regulation, respectively.

Information Paper on “Companies (Amendment)(No. 2) Ordinance 2018”

Background

3. On 21 December 2018, an Information Paper on the Companies (Amendment) (No. 2) Ordinance 2018 (“Amendment Ordinance”) prepared by the Financial Services and Treasury Bureau (“FSTB”) and the Companies Registry (“CR”) was circulated to members. The Information Paper sought to provide information to members in respect of the passage of the Companies (Amendment) Bill 2018 (“Bill”), the legislative process involved and the major amendments introduced by the Amendment Ordinance.

4. At the 227th SCCLR meeting held on 18 November 2016, members were informed that the implementation of the CO since March 2014 had been smooth, with the business community widely adopting the new initiatives introduced

to save compliance costs and facilitate business. Based on the operational experience of the new regime and feedback from stakeholders, Government had drawn up a list of proposed items for legislative amendments for improving the clarity and operation of the CO. Members were consulted on the proposed amendments to the CO and were generally supportive of the legislative proposals.¹

5. Taking into account members' comments and views of relevant stakeholders, the Bill was finalised and introduced into the Legislative Council ("LegCo") on 25 April 2018. The Bill was subsequently passed on 28 November 2018 and the Amendment Ordinance was published in the Gazette on 7 December 2018.

Major Amendments

6. The Information Paper briefed members on the major amendments introduced by the Amendment Ordinance, which included various amendments to the CO and its subsidiary legislation so as to incorporate new developments after the commencement of the CO, and clarify the policy intent or remove ambiguities and inconsistencies. Some of the major amendments include:

- (a) Allowing the holding companies of two other types of corporate groups to benefit from the reporting exemption provided that both the holding company and all its subsidiaries meet the size criteria, namely:
 - (i) holding companies of corporate groups comprising small or eligible private companies and small guarantee companies (mixed groups); and
 - (ii) holding companies of groups of small private companies, eligible private companies, small guarantee companies, or mixed groups described in paragraph (i) above, with non-Hong Kong subsidiaries;
- (b) Updating the definitions of "holding company" and "parent undertaking" to reflect the current accounting standards;

¹ Please see the SCCLR Annual Report for the year 2016/2017 which is available at the Companies Registry's website <https://www.cr.gov.hk/en/standing/docs/33anrep-e.pdf>.

- (c) Empowering the FS to make regulations for non-Hong Kong companies relating to the display of company names and the disclosure of liability status in order to align the obligations of non-Hong Kong companies with those of local companies in the display of company names;
- (d) Aligning the penalty level for an offence relating to the revision of financial statements with that for a corresponding offence relating to the original financial statements;
- (e) Providing for an option for a holding company which is also a wholly owned subsidiary to prepare consolidated financial statements instead of its own financial statements; and
- (f) Providing for alternative means for a holding company to list the names of the directors of its subsidiary undertakings in the directors' report, by adding an option of allowing a holding company to provide such information on its website, or by keeping a list at its registered office and making it available for inspection.

7. Members were invited to note that the Amendment Ordinance would come into operation on 1 February 2019, except for 2 provisions² that would come into operation on a day to be appointed by SFST by notice published in the Gazette.

Information Paper on Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation

Background

8. On 15 March 2019, an Information Paper on the Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation was published.

² The 2 provisions, sections 79 and 89 of the Amendment Ordinance, seek to repeal section 792, and item 7 of Schedule 7, to the CO which relate to the disclosure requirements of non-Hong Kong companies and the related offences under the compounding scheme.

Limited Liability) Regulation (“the Regulation”) prepared by FSTB and CR was circulated to members. The Information Paper sought to provide information to members in respect of the Regulation and the legislative process.

9. The Amendment Ordinance came into operation on 1 February 2019, except for sections 79 and 89 which were specifically carved out for separate commencement on a day to be appointed by the SFST. One of the objectives of the Amendment Ordinance was to align the obligations of non-Hong Kong companies with those of Hong Kong companies in the display of company names and disclosure of liability status. In relation thereto, the Amendment Ordinance added new sections 805A and 805B to the CO to empower FS to make regulations to require non-Hong Kong companies to disclose prescribed information and to set out the criminal consequences of the failure to make such disclosures.

10. Following the implementation of the Amendment Ordinance and pursuant to sections 805A and 805B of the CO, FS had made the Regulation.

Major Provisions

11. Members were briefed that the Regulation provided for, in relation to a non-Hong Kong company, the requirements on the display of company name and place of incorporation, and the disclosure of members’ limited liability. It was largely modelled on the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) (“Cap. 622B”), which provides for similar requirements in relation to a Hong Kong company. The Regulation also re-enacted the provisions in section 792 of the CO concerning compliance with the relevant requirements when a non-Hong Kong company is in liquidation.

12. Major provisions of the Regulation include:

- (a) the name and place of incorporation of a non-Hong Kong company has to be displayed in legible characters at every business venue of the

company in Hong Kong such that they could be easily seen by any visitor to the venue, subject to the prescribed exceptions;

- (b) requirements for a non-Hong Kong company to state its name and place of incorporation in every communication document and transaction instrument in Hong Kong;
- (c) requirements for a non-Hong Kong company to disclose, where applicable, its members' limited liability at every business venue and in every communication document and transaction instrument of the company in Hong Kong;
- (d) requirements for a non-Hong Kong company in liquidation to state its name, place of incorporation and members' limited liability in every advertisement of the company in Hong Kong, and to add "(in liquidation)" after its name when displaying or stating its name pursuant to the provisions of the Regulation; and
- (e) offences in respect of non-compliance with the requirements under the Regulation.

13. Members were informed that similar to the treatment of certain offences in section 792 of the CO and Cap. 622B, certain offences under section 8 of the Regulation were to be included in Schedule 7 of the CO³ so that compound offers could be issued in respect of the offences before consideration of any prosecution action. For that purpose, pursuant to section 911 of the CO, FS had made the Companies Ordinance (Amendment of Schedule 7) Notice 2019 ("Schedule 7 Notice").

³ Schedule 7 of the CO specifies offences in respect of which no proceedings will be instituted under certain conditions.

14. Members were also informed that by the Companies (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice (“Commencement Notice”), SFST had appointed 1 August 2019 as the commencement date of sections 79 and 89 of the Amendment Ordinance.

15. Members were invited to note that the Regulation, the Schedule 7 Notice and the Commencement Notice would be published in the Gazette on 15 March 2019 and tabled before LegCo on 20 March 2019, and subject to the negative vetting by LegCo, the Regulation, the Schedule 7 Notice and sections 79 and 89 of the Amendment Ordinance would come into operation on 1 August 2019.