

Companies (Amendment) (No. 2) Ordinance 2018

Effective on 1 February 2019

Important

This pamphlet is intended to highlight some of the major changes under the Companies (Amendment) (No. 2) Ordinance 2018 for general reference. It should be read in conjunction with the provisions of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) and should not be regarded as a substitute for reading it.

You can purchase a hard copy of the Companies Ordinance from the Online Government Bookstore (www.bookstore.gov.hk) or call the Publications Sales Unit of the Information Services Department at (852) 2537 1910. You can also read the full text of the Companies Ordinance at www.elegislation.gov.hk. In case of doubt, companies are advised to seek independent professional advice as they see fit.

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Key Amendments

Updating relevant accounting-related provisions

- ◆ Update the definitions of “holding company” and “parent undertaking” to reflect the current accounting standards.
- ◆ Adopt control as the basis for determining whether an entity is a “subsidiary” of the “parent undertaking”.

Streamlining and clarifying provisions to facilitate compliance

- ◆ Clarify that a company with both an English name and a Chinese name may display either its English name or Chinese name.
- ◆ Clarify that the statement of capital should report the share capital position immediately after the relevant change; and the obligation to give particulars of class rights in the statement of capital only arises when there are different classes of shares.
- ◆ Provide that when all members in a class agree to a variation of the class rights, the variation will have effect as agreed.
- ◆ Provide alternative means for a holding company to disclose the names of the directors of all its subsidiary undertakings on its website, or by keeping such a list at its registered office and making it available for inspection.
- ◆ Provide an option for a holding company which is also a wholly owned subsidiary to prepare consolidated financial statement instead of its own financial statement.
- ◆ Allow a partially owned subsidiary to prepare its own financial statement instead of consolidated financial statement if all members agree.

Key Amendments

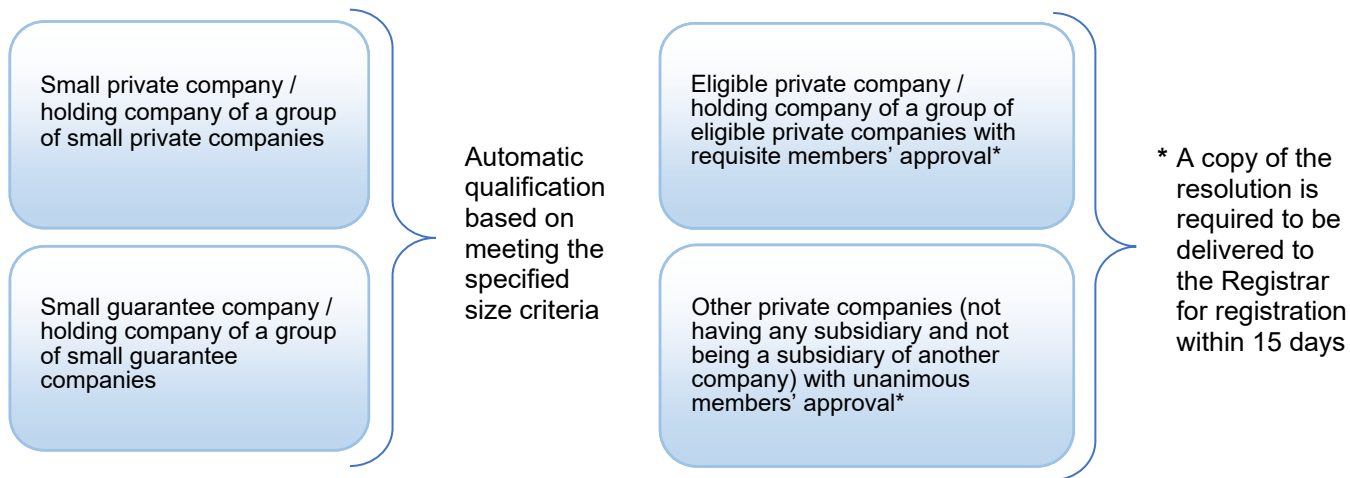
- ◆ Clarify in the Model Articles that only an ordinary resolution of a company is required for certain types of alteration of the share capital of the company.
- ◆ Clarify that “non-statutory accounts” do not include a summary financial report.
- ◆ Provide that the financial year of a company may be shortened or lengthened by a period not exceeding 7 days.
- ◆ Clarify the primary accounting reference date for a dormant company that has ceased to be dormant.
- ◆ Clarify provisions in respect of company record-keeping and company administration and procedure, including the requirements to keep resolutions passed by directors without a meeting and to notify the Registrar of the location of keeping minutes of directors’ meetings, resolutions of directors and written records of decisions of sole director.
[Note: Revised Form NR2 - Notice of Location of Registers and Company Records is available for downloading from the Registry’s website]
- ◆ Clarify that the court-free procedure for horizontal amalgamation is also available for subsidiaries of a holding company which is incorporated outside Hong Kong so long as the merging companies are Hong Kong companies.

Aligning penalty provisions

- ◆ Align the penalty level for an offence for making a misleading, false or deceptive statement to an auditor relating to revised financial statements with a corresponding offence relating to original financial statements.

Expanding the types of companies eligible for Reporting Exemption

Existing Reporting Exemption



Allow 2 other types of corporate groups to benefit from the reporting exemption :
 (provided that both the holding company and all of its subsidiaries meet the specified size criteria)

- 1) Holding companies of corporate groups comprising small private companies / eligible private companies and small guarantee companies (mixed groups); and
- 2) Holding companies of groups of small private companies, eligible private companies and small guarantee companies or mixed groups described above, with non-Hong Kong subsidiaries.

Mixed Group - Size Criteria	
If the holding company is a small private company	<p><u>Any 2 conditions below should be met:</u></p> <ol style="list-style-type: none"> 1. Aggregate total revenue not exceeding HK\$100M 2. Aggregate total assets not exceeding HK\$100M 3. Aggregate employees not exceeding 100
If the holding company is an eligible private company (with members' approval)	<p><u>Any 2 conditions below should be met:</u></p> <ol style="list-style-type: none"> 1. Aggregate total revenue not exceeding HK\$200M 2. Aggregate total assets not exceeding HK\$200M 3. Aggregate employees not exceeding 100 ◆ For a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company
If the holding company is a small guarantee company	<p><u>The following condition should be met:</u></p> <p>Aggregate total revenue not exceeding HK\$25M</p>

Visit Companies Registry's website at www.cr.gov.hk for more information

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