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COMPANIES REGISTRY

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Companies Registry External Circular No. 1 / 2019

Commencement of the Companies (Amendment) (No. 2) Ordinance 2018

This circular announces that the Companies (Amendment) (No. 2) Ordinance 2018 (“the Amendment Ordinance”) will come into operation on 1 February 2019¹.

Background

2. The new Companies Ordinance (Cap. 622) (“new CO”), which commenced operation in March 2014, provides for a modern statutory framework for the incorporation and operation of companies in Hong Kong. Based on the operational experience since the commencement of the new CO and feedback from stakeholders, the Amendment Ordinance seeks to amend some provisions of the new CO to incorporate new developments, improve the clarity and operation of the new CO and further facilitate business in Hong Kong.

¹ This is subject to two provisions which will commence later. The two provisions repeal section 792 of and item 7 of Schedule 7 to the new C O which relate to the disclosure requirements of non-Hong Kong companies and the related offence.

The Amendment Ordinance

3. **The major amendments introduced by the Amendment Ordinance include (a) updating relevant accounting-related provisions, (b) expanding the types of companies eligible for reporting exemption, and (c) providing for miscellaneous matters in relation to various administrative, procedural and technical requirements regulating local companies and non-Hong Kong companies.** Details of the key amendments introduced by the Amendment Ordinance are set out at the **Annex**.

Revision of Specified Form NR2

4. Upon clarification of the provisions in the new CO in respect of record-keeping and company administration, Form NR2 entitled “Notice of Location of Registers and Company Records” will be revised to provide for the reporting of the location of copies of resolutions passed by directors without a meeting, minutes of proceedings of directors’ meetings and written records of decisions of sole director as required to be kept by companies under the Amendment Ordinance. Soft copies of the revised Form NR2 can be downloaded from the website of the Companies Registry at www.cr.gov.hk.

Implementation of the Amendment Ordinance

5. **A new thematic section on the Amendment Ordinance has been set up on our website at www.cr.gov.hk/en/companies_ordinance2018.** The section contains the full text of the Amendment Ordinance, frequently asked questions, External Circular and other publications issued by the Registry in relation to the implementation of the Amendment Ordinance.



Enquiries

6. **For enquiries relating to the Amendment Ordinance, a dedicated hotline 3142 2822 has been set up.** The hotline operates from Monday to Friday 9 a.m. to 8 p.m. and on Saturday from 9 a.m. to 1 p.m. (excluding public holidays). Email enquiries can be sent to coa2@cr.gov.hk.

Ms Ada LL CHUNG
Registrar of Companies

Key Amendments Introduced by the Amendment Ordinance

Amendments to incorporate new developments

Reporting exemption – expanding the scope for simplified reporting

- Allowing the holding companies of two types of corporate groups as set out below to benefit from the reporting exemption, i.e. to adopt simplified accounting and financial reporting provided that both the holding company and all its subsidiaries meet the size criteria:
 - (i) holding companies of corporate groups comprising small private companies 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.

Updating relevant accounting-related provisions

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

Amendments to clarify policy intent or remove ambiguities and inconsistencies

Display of company names for non-Hong Kong companies

- Empowering the Financial Secretary to make regulations for non-Hong Kong companies to provide for the detailed requirements 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.

Alignment of penalty provisions relating to financial statements and reports

- Aligning 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.

Streamlining and clarifying provisions to facilitate compliance

- Expressly allowing a company's articles to be in electronic form.
- Clarifying that if a company has both an English registered name and a Chinese registered name —
 - (i) both names must be stated in its articles;
 - (ii) the common seal of the company may be engraved with only its English name or Chinese name; and
 - (iii) the company may display either its English name or Chinese name.
- Providing for an exemption from the general registration requirement for an alteration of articles if such alteration is in respect of a change of company name only, as separate registration requirement already applies to a change of company name.
- Clarifying that the statement of capital should report the share capital position immediately after the relevant change instead of the capital position as at the date of change.
- Clarifying that the obligation to give particulars of class rights in the statement of capital only arises if the share capital of a company is divided into different classes of shares.
- Providing that if all members in a class agree to a variation of the class rights, the variation will 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.
- Providing for an exemption from the requirement to notify the Registrar of Companies of a change in the place where copies of instruments creating charges are kept 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, as separate notification requirement already applies to the change of such address.
- Providing alternative means for a holding company to disclose the names of the directors of its subsidiary undertakings 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.

- 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.
- Providing that for a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company only.
- Clarifying that “non-statutory accounts” do not include a summary financial report.
- Providing that the financial year of a company may be shortened or lengthened by a period not exceeding 7 days.
- Clarifying the primary accounting reference date for a dormant company that has ceased to be dormant.
- Clarifying provisions in respect of company record-keeping and company administration and procedure including matters relating to —
 - (i) the keeping of records of directors to include resolutions passed by directors without a meeting;
 - (ii) the records which may be used as evidence of proceedings at a directors’ meeting and general meeting; and
 - (iii) the notice to the Companies Registry on where minutes of directors’ meetings, resolutions of directors and written records of decisions of sole director are kept.
- Clarifying 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.
- Amending 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.
- Clarifying 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.

- Clarifying the power of the Government to dispose of any property or right vested as *bona vacantia* under the predecessor Companies Ordinance.
- Clarifying the conditions for granting applications for administrative restoration of companies.
- Clarifying that an authorized representative of a non-Hong Kong company must have an address in Hong Kong.
- Providing a definition for “officer” of a subsidiary undertaking.
- Clarifying in the Model Articles that an ordinary resolution of a company is required only for certain types of alteration of the share capital of the company.