



公 司 註 冊 處
COMPANIES REGISTRY

香港金鐘道六十六號
金鐘道政府合署十五樓

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25 November 2005

COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 7 / 2005

Implementation of Companies (Amendment) Ordinance 2005

Introduction

The Companies (Amendment) Ordinance 2005 (Commencement) Notice (L. N. 163 of 2005) was published in the Gazette on 7 October 2005. The Secretary for Financial Services and the Treasury has appointed 1 December 2005 as the date on which the Companies (Amendment) Ordinance 2005 (the Amendment Ordinance) shall come into operation.

2. The main purpose of the Amendment Ordinance is to amend the statutory definition of the term “subsidiary” in the Companies Ordinance in order to more closely align the meaning of the term with the meaning attached to the term in the International Accounting Standards. However, the new meaning will apply only for the purpose of group accounts of a company. This would ensure that, under the law, the group accounts would better reflect the financial position of the company. The definition of “subsidiary” for purposes other than the preparation of group accounts will not be affected.

Major Changes

3. The Amendment Ordinance covers the following major amendments :-
- (a) To introduce new terms of “subsidiary undertaking”, “parent company” and “parent undertaking”;
 - (b) To add “the right to exercise a dominant influence over another undertaking” test (which is defined as the right to give directions with respect to the operating and financial policies of that other undertaking which its directors will be obliged to comply with) to the existing tests of determining the existence of a parent-subsidiary relationship; and
 - (c) To introduce “true and fair view override” provisions to the effect that, if compliance with the relevant requirements of the Companies Ordinance does not result in a true and fair view of the state of affairs of the company or the group, the directors should provide additional information or depart from these requirements to the extent necessary to give a true and fair view.

Transitional Provision

4. Section 19(1) of the Amendment Ordinance provides that the amendments made by the Amendment Ordinance shall not apply in relation to a company until the start of the company's first financial year beginning after the expiration of the 30 days immediately following the commencement of the section. In view of the fact that 1 December 2005 has been appointed as the commencement date of the Amendment Ordinance, the amendments shall not apply in relation to a company until a company's first financial year begins on 1 January 2006 (i.e. after the expiration of the 30 day period immediately following the commencement of the Amendment Ordinance on 1 December 2005) or any date thereafter. In other words, companies will need to comply with the new provisions in the Amendment Ordinance as and when their new financial year commences from 1 January 2006 onwards.

Introduction of Revised Specified Form

5. The broadened definition of the term "subsidiary" which includes undertakings which are not bodies corporate (i.e. partnerships or unincorporated associations) has necessitated consequential amendments to the relevant disclosure requirements in section 128(1) of the Companies Ordinance and the revision of the specified Form AC1 for reporting the particulars of subsidiaries. With effect from 1 December 2005, the revised Form AC1 may be downloaded from the Companies Registry's website (www.cr.gov.hk). Customers may also purchase hard copies of the form at 14th floor, Queensway Government Offices, 66 Queensway, Hong Kong.

6. This circular is intended to provide a general guide to the subject matter and should in no way be treated as a substitute for specific legal advice for individuals.

G W E JONES
Registrar of Companies

c.c. CR/HQ/8/1/5/3 (II)
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