

## 2018年公司(修訂)條例草案

# COMPANIES (AMENDMENT) BILL 2018

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## 背景 Background (1)

新《公司條例》(第622章) (“新條例”)

The new Companies Ordinance (Cap. 622) (“new CO”)

- 為在香港成立和營運的公司提供現代化的法律框架  
provides modern statutory framework for the incorporation and operation of companies in Hong Kong
- 引入多項簡化法定程序、減低公司遵規成本和照顧中小型企業需要的措施  
introduced a number of measures to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of SMEs



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## 背景 Background (2)

### 新《公司條例》(第622章) (“新條例”)

#### The new Companies Ordinance (Cap. 622) (“new CO”)

例如 –

For example –

1. 廢除本地公司須設有組織章程大綱作為公司的章程文件的規定  
Abolishing the requirement to have a Memorandum of Association as a constitutional document of a local company
  - ◆ 根據新條例，在香港成立為法團的公司只須設有章程細則  
A company incorporated in Hong Kong under the new CO is only required to have Articles of Association
  - ◆ 舊《公司條例》下須載於組織章程大綱內的內容則會在章程細則中載明  
The information which was required to be contained in the Memorandum of Association under the predecessor CO are to be set out in the Articles of Association



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## 背景 Background (3)

### 新《公司條例》(第622章) (“新條例”)

#### The new Companies Ordinance (Cap. 622) (“new CO”)

2. 公司可自行選擇是否使用法團印章  
Making the use of common seal optional
  - ◆ 公司可不使用其法團印章，並由以下人員簽立文件 —  
A company may, without using a seal, execute a document by having it signed by its officers –
    - ✓ 兩名董事；或  
2 directors; or
    - ✓ 任何董事及該公司的公司秘書；或  
a director and the company secretary; or
    - ✓ 如公司只有一名董事，由該董事代表該公司簽署該文件  
in the case of a company with only 1 director, the sole director
  - ◆ 公司可按規定在文件中說明該文件將由有關公司作為契據而簽立及將該文件作為契據而交付，以簽立契據  
A company may execute a deed by having it so signed and expressed to be executed as a deed and delivering it as a deed



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## 背景 Background (4)

### 新《公司條例》(第622章) (“新條例”)

#### The new Companies Ordinance (Cap. 622) (“new CO”)

3. 公司可在取得股東一致同意的情况下無須舉行周年成員大會  
Allowing companies to dispense with AGMs by unanimous shareholders' consent
4. 准許公司使用電子科技在多於一個地點舉行成員大會  
Permitting a general meeting to be held at more than one location using electronic technology
5. 列明以電子形式向公司作出或由公司作出通訊的規則  
Setting out the rules governing communications to and by companies in electronic form



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## 背景 Background (5)

### 新《公司條例》(第622章) (“新條例”)

#### The new Companies Ordinance (Cap. 622) (“new CO”)

6. 為同一集團內的全資附屬公司的合併訂立新的不經法院的法定合併程序  
Introducing a court-free statutory amalgamation procedure for wholly owned intra-group companies
7. 訂立處長以行政方式把以解散公司恢復註冊的新程序  
Introducing a new administrative restoration procedure for a company dissolved by the Registrar
8. 便利中小企擬備簡明財務報表  
Facilitating SMEs to prepare simplified financial statements



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## 背景 Background (6)

### 新《公司條例》(第622章) (“新條例”)

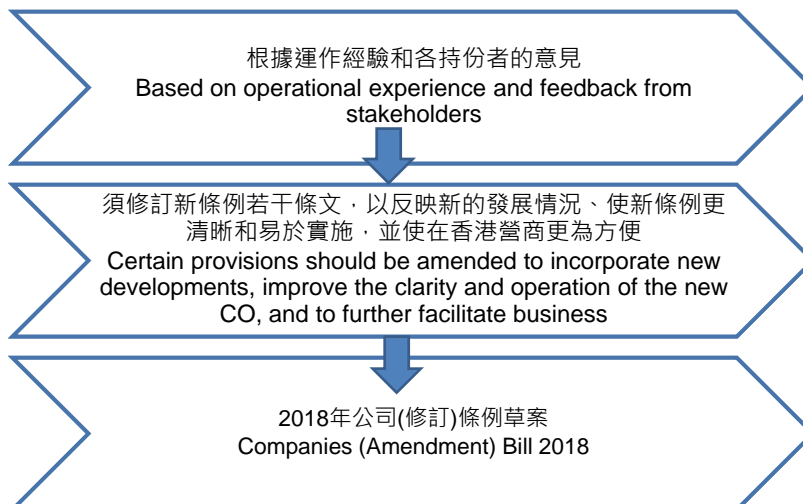
#### The new Companies Ordinance (Cap. 622) (“new CO”)

- 達到加強企業管治、確保妥善規管、方便營商、以及使相關法例現代化的政策目標  
achieved policy objectives to enhance corporate governance, ensure better regulation, facilitate business and modernise the law
- 自2014年3月開始實施，一直運作順暢  
commenced operation in March 2014 and smooth implementation



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## 背景 Background (7)



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## 公眾諮詢及生效日期

### Public Consultation & Commencement Date

在2016年向專業團體和商會等相關持份者及公司法改革常務委員會進行諮詢，他們大致支持建議  
Consulted relevant stakeholders, including professional bodies and chambers of commerce, and the Standing Committee on Company Law Reform in 2016, all were generally supportive



條例草案於2018年4月25日在立法會首讀，及後已成立法案委員會，對條例草案詳加研究  
The Bill received its First Reading on 25 April 2018 at the Legislative Council, thereafter a Bills Committee was formed to study the Bill in detail



條例草案如獲通過，將自2019年2月1日起實施  
The Bill, if passed, would come into operation on 1 February 2019



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## 條例草案 The Bill

條例草案建議修訂新條例及其附屬法例，主要為 –

The Bill proposes to amend the new CO and its subsidiary legislation mainly to –

- a) 改善帳目條文的施行  
improve the operation of the accounts provisions
- b) 擴闊在提交報告方面獲豁免的公司的類別  
expand the types of companies within the reporting exemption
- c) 作出某些雜項及相關事宜的修訂  
make certain miscellaneous and related amendments



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## 條例草案 The Bill

條例建議可概括分為兩大類：  
The proposed legislative amendments can be broadly divided into 2 categories:

- 為新條例實施後的新發展作出的修訂  
amendments to incorporate new developments after the commencement of the new CO
- 為釐清政策原意或刪除不清晰或不一致之處的修訂  
amendments to clarify policy intent or remove ambiguities and inconsistencies

## 主要修訂 Key Amendments

### A. 為新發展作出的修訂 **Amendments to incorporate new developments**

1. 財務報告豁免措施 – 擴大簡明財務報表的涵蓋範圍  
Reporting exemption – expanding the scope for simplified reporting
2. 更新新條例第9部及附表1的會計相關條文  
Updating the accounting-related provisions in Part 9 and Schedule 1 of the new CO

## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (1)

#### 現時的豁免措施 (1) :

#### Existing reporting exemption (1):

- 舊《公司條例》第141D條訂明，私人公司（屬於法團集團成員的公司及某些指明公司除外）如獲全體股東書面同意，可就某財政年度擬備簡明帳目及簡明董事報告。

Under section 141D of the predecessor CO, a private company (other than a company which is a member of a corporate group and certain companies specifically excluded) may with the written agreement of all the shareholders prepare simplified accounts and directors' report in respect of one financial year at a time.



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## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (2)

#### 現時的豁免措施 (2) :

#### Existing reporting exemption (2):

- 根據新條例，符合規模準則的私人或擔保公司及合資格公司集團的控權公司（某些指明公司除外）在新條例中是指「在提交報告方面獲豁免」的公司（第9部第2分部及附表3）。

Under the new CO, private or guarantee companies and holding company of a group of eligible companies (other than certain companies specifically excluded) that meet the specified size criteria are referred to as companies falling within the "reporting exemption" (Division 2 of Part 9 and Schedule 3).

- 在提交報告方面獲豁免的公司可擬備簡明財務報表，在擬備核數師報告和董事報告時須符合的規定也較為寬鬆。

Companies that fall within the reporting exemption can prepare simplified financial statements and is subject to less stringent requirements for the preparation of auditors' reports and directors' reports.



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## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (3)

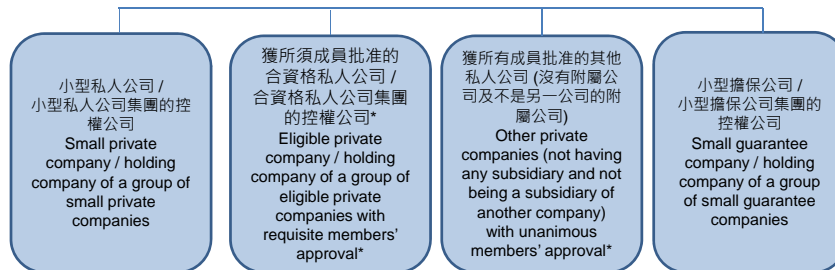
現時的豁免措施 (3) :

**Existing reporting exemption (3):**

舊《公司條例》The predecessor CO

第141D條下的私人公司  
Section 141D  
private companies

新條例 The new CO



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\*於決議通過的15日內，將決議的文本交付處長登記 (第622(1)(e)、(f)及(2)條)  
\*A copy of the resolution is required to be delivered to the Registrar for registration within 15 days (s. 622(1)(e), (f) & (2))

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## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (4)

為給予中小企更大彈性，以減低遵規成本，我們建議讓另外兩類法團集團的控股公司也可受惠於財務報告豁免措施

(惟控股公司和旗下所有附屬公司均須符合規模準則)

To provide more flexibility to SMEs to reduce their compliance costs, we propose to 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 size criteria)



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## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (5)

另外兩類法團集團：

2 other types of corporate groups:

#### “混合集團” “mixed groups”

由小型私人公司或合資格私人公司和小型擔保公司組成的法團集團的控股公司  
Holding companies of corporate groups comprising small private companies or eligible private companies and small guarantee companies

#### 屬非香港公司的附屬公司 non-HK subsidiaries

由小型私人公司、合資格私人公司或小型擔保公司組成的法團集團，或混合集團，並擁有屬非香港公司的附屬公司的控股公司  
Holding companies of groups of small private companies, eligible private companies and small guarantee companies or mixed groups with non-HK subsidiaries



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## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (6)

財務報告豁免措施 - 規模準則 (1)

Reporting Exemption – Size Criteria (1)

	小型私人公司/集團 Small private company/group	合資格私人公司/集團 Eligible private company/group	小型擔保公司/集團 Small guarantee company/group
收入總額/收入總額的總數 Total / aggregate total revenue	不超過1億元 Not exceeding \$100M	不超過2億元 Not exceeding \$100M	不超過2,500萬元 Not exceeding \$25M
資產總額/資產總額的總數 Total / aggregate total assets	不超過1億元 Not exceeding \$100M	不超過2億元 Not exceeding \$200M	無限制 No limit
職員/職員總人數 Employees / aggregate employees	不超過100人 Not exceeding 100	不超過100人 Not exceeding 100	無限制 No limit
成員批准 Members' approval	不需要* Not required*	獲得最少75%的成員批准，而在財政年度完結前的6個月沒有成員反對 At least 75% of members' approval and no objection from a member 6 months before the end of the financial year	不需要* Not required*



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\*按規模自動符合資格

\*Automatic qualification based on size

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## 擴大簡明財務報表的涵蓋範圍

### Expanding the scope for simplified reporting (7)

#### 財務報告豁免措施 - 規模準則 (2)

#### Reporting Exemption – Size Criteria (2)

混合集團 Mixed Group	
如控股公司屬小型私人公司 If the holding company is a small private company	須符合以下任何兩個條件： 1. 收入總額的總數不超過1億元 2. 資產總額的總數不超過1億元 3. 職員總人數不超過100人 Any 2 conditions below should be met: 1. Aggregate total revenue not exceeding HK\$100M 2. Aggregate total assets not exceeding HK\$100M 3. Aggregate employees not exceeding 100
如控股公司屬合資格私人公司 (經成員批准) If the holding company is an eligible private company (with members' approval)	須符合以下任何兩個條件： 1. 收入總額的總數不超過2億元 2. 資產總額的總數不超過2億元 3. 職員總人數不超過100人 Any 2 conditions below should be met: 1. Aggregate total revenue not exceeding HK\$200M 2. Aggregate total assets not exceeding HK\$200M 3. Aggregate employees not exceeding 100
如控股公司屬小型擔保公司 If the holding company is a small guarantee company	須符合以下條件： 收入總額的總數不超過2,500萬元 The following condition should be met: Aggregate total revenue not exceeding HK\$25M



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## 更新會計相關條文

### Updating the accounting-related provisions (1)

- 修訂有關“控股公司”及“母企業”的定義，以反映現時的會計準則，避免新條例與現時的會計準則出現不一致

Update the definitions of “holding company” and “parent undertaking” to reflect the current accounting standards, to avoid inconsistency between the new CO and the current accounting standards

- 釐清“非法定帳目”並不包括財務摘要報告  
Clarify that “non-statutory accounts” do not include a summary financial report



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## 更新會計相關條文

### Updating the accounting-related provisions (2)

- 訂明財政年度可縮短或延長不多於7天  
Provide that the financial year may be shortened or lengthened by a period not exceeding 7 days
- 把控制權確立為決定哪些實體是否“母企業”的“附屬公司”時的準則  
Establish control as the basis for determining whether an entity is a “subsidiary” of the “parent undertaking”

## 更新會計相關條文

### Updating the accounting-related provisions (3)

#### 何謂“母企業”？

#### What is “parent undertaking”?

任何企業如有以下情況，即屬另一企業的母企業  
An undertaking is a parent undertaking of another undertaking if –

它控制該另一企業；或  
it has **control** over that other undertaking; or

就適用於它的財務報表的會計準則而言，它屬該另一企業的母企業 (“parent”)  
it is a parent of that other undertaking for the purposes of the accounting standards applicable to its financial statements

## 更新會計相關條文

### Updating the accounting-related provisions (4)

#### “控制”的定義 (1)

#### **The definition of “control” (1)**

- 任何企業如有權管治另一企業的財務及營運政策，以從該另一企業的活動中取得利益，即屬控制該另一企業

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



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## 更新會計相關條文

### Updating the accounting-related provisions (5)

#### “控制”的定義 (2)

#### **The definition of “control” (2)**

- 任何企業如有以下情況，則除非相反證明成立，須推定為控制另一企業 –  
An undertaking is presumed, unless the contrary is proved, to have control over another undertaking if —
  - a) 它持有該另一企業的過半數表決權；  
it holds a majority of the voting rights in that other undertaking;
  - b) 它因與該另一企業其他成員達成的協議，有權行使該另一企業的過半數表決權；  
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;



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## 更新會計相關條文

### Updating the accounting-related provisions (6)

#### “控制”的定義 (3)

#### **The definition of “control” (3)**

- c) 它具有權利委任或罷免該另一企業的董事局過半數董事或同等管治團體的過半數成員；或  
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) 它有權在該另一企業的董事局或同等管治團體的會議上，投過半數的票。  
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.



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## 主要修訂 Key Amendments

### **B. 為釐清政策原意或刪除不清晰或不一致之處的修訂** **Amendments to clarify policy intent or remove ambiguities and inconsistencies**

1. 非香港公司展示公司名稱  
Display of company name for non-HK companies
2. 劃一財務報表及報告的罰則條文  
Alignment of penalty provisions relating to financial statements and reports
3. 精簡和釐清條文以助遵規  
Streamlining and clarifying provisions to facilitate compliance



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## 非香港公司展示名稱

### Display of name for non-HK companies (1)

- 新條例及其附屬法例均對在香港成立為法團的公司須展示公司名稱作出詳細規定，但沒有就非香港公司作出相應規定  
The new CO and its subsidiary legislation contained detailed requirements regarding the display name of a company incorporated in HK but there are no corresponding provisions for non-HK companies
  - ◆ 《公司(披露公司名稱及是否有限公司)規例》(第622章·附屬法例B)規定在香港成立的公司須持續地在其註冊辦事處及每個業務場所展示該公司的註冊名稱  
Companies (Disclosure of Company Name and Liability Status Regulation (Cap 622B) requires a company incorporated in HK to display continuously its registered name at its registered office and business venue
  - ◆ 公司亦須在其任何通訊文件、交易文書及其網站上說明該公司的註冊名稱  
A company is also required to state its registered name in the company's communication documents and transaction instruments and on its website



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## 非香港公司展示名稱

### Display of name for non-HK companies (2)

- 賦權財政司司長就非香港公司須展示公司名稱和披露公司是否屬有限公司訂立規例  
Empower the Financial Secretary to make regulations providing for the requirements on the display of company names and the disclosure of liability status of non-HK companies
- 劃一非香港公司和本地公司在展示公司名稱方面的責任  
Align the obligations of non-HK companies with those of local companies in the display of company names



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## 劃一財務報表及報告的罰則條文

### Alignment of penalty provisions relating to financial statements

- 現時，就修改財務報表相關罪行所訂的罰則水平，低於就原財務報表相關罪行所訂的罰則水平  
At present, the penalty level for an offence relating to the revision of financial statements is lower than the penalty for a corresponding offence relating to the original financial statements
- 劃一相關罪行的罰則水平，刪除不一致的情況  
Remove the inconsistencies and align the penalty levels for the relevant offences



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## 精簡和釐清條文以助遵規

### Streamline and clarify provisions to facilitate compliance (1)

- 讓屬全資附屬公司的控權公司可選擇擬備綜合財務報表  
Provide an option for holding company which is also a wholly owned subsidiary to prepare consolidated financial statements
- 如所有成員同意，非全資附屬公司可擬備其公司本身的財務報表而非綜合財務報表  
A partially owned subsidiary may prepare its own accounts instead of consolidated financial statements if all members agree



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### 精簡和釐清條文以助遵規

#### Streamline and clarify provisions to facilitate compliance (2)

- 除了在董事報告載列旗下附屬企業的董事的姓名外，增設另一選項，讓控權公司可選擇在其網站提供有關資料，或在其註冊辦事處備存名冊以供查閱

Provide alternative means for a holding company to list the names of the directors of all its subsidiary undertakings by adding an option of allowing a holding company to provide such information on its website, or by keeping such a list at its registered office and making it available for inspection



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### 精簡和釐清條文以助遵規

#### Streamline and clarify provisions to facilitate compliance (3)

- 就合資格私人公司集團而言，只要控權公司的成員通過決議，該控權公司便可採用簡明財務報表

For a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company only

- 公司的章程細則可採用電子形式；如公司兼有中文名稱及英文名稱，其章程細則須兼述明該兩個名稱

Clarify that a company's articles may be in electronic form; and if a company has both an English name and a Chinese name, both names must be stated in the articles



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### 精簡和釐清條文以助遵規

#### Streamline and clarify provisions to facilitate compliance (4)

- 凡屬公司就其更改公司名稱而對章程細則作出的修改，均可獲豁免有關修改章程細則的一般註冊規定  
Provide for an exemption from general registration requirement for alteration of articles if such alteration is in respect of a change of company name
- 容許兼有英文名稱及中文名稱的公司可展示其中文名稱或英文名稱  
Allow a company with both an English name and a Chinese name to display either its English name or Chinese name



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### 精簡和釐清條文以助遵規

#### Streamline and clarify provisions to facilitate compliance (5)

- 訂明股本說明須報告緊接有關更改後的股本狀況，而非更改當天的股本狀況，以及釐清只有在股本分為不同類別時，才須在股本說明內述明類別權利詳情  
Clarify that the statement of capital should report the capital position immediately after the relevant change instead of the capital position as at the date of change; and the obligation to give particulars of class rights in the statement of capital only arises if there are different classes of shares
- 如某類別的所有股份持有人或成員同意更改該類別的權利，則有關更改便如他們所同意具有效力  
If all holders of shares or members in a class agree to a variation of the class rights, the variation will have effect as agreed



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## 精簡和釐清條文以助遵規

### Streamline and clarify provisions to facilitate compliance (6)

- 訂明一間不再是不活動公司的公司的首個財政年度  
Specify the primary accounting reference date for a dormant company that has ceased to be dormant
- 訂明只要合併的公司為香港公司，在香港以外地方成立為法團的控權公司的附屬公司亦可藉不經法院的程序進行橫向合併  
Clarify that the court-free procedure for horizontal amalgamation is also available for subsidiaries of a holding company incorporated outside HK so long as the merging companies are HK companies



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## 精簡和釐清條文以助遵規

### Streamline and clarify provisions to facilitate compliance (7)

- 釐清關於公司備存紀錄和公司管理及議事程序的條文，包括有關備存的紀錄須包括董事在不舉行會議下通過的決議  
Clarify provisions in respect of company record-keeping and company administration and procedure including matters relating to keeping of records of directors to include resolutions passed by directors without a meeting
- 修改有關批准以行政方式恢復公司註冊的申請的條件，和明文訂明政府處置根據前身《公司條例》屬無主財物並歸屬政府的財產的權力  
Alter the conditions for granting applications for administrative restoration of companies; and expressly provide for Government's power to dispose of any property or right vested as *bona vacantia* under the predecessor CO



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## 其他文本及輕微修訂

### Other textual and minor amendments (1)

例子 –

#### Examples –

- ✓ 把“羅馬字”改為“拉丁字母”  
“Roman script” replaced with “Latin alphabet”
- ✓ 把“電子形式”改為“電子紀錄形式”  
“while in electronic form” changed to “while in the form of an electronic record”
- ✓ 在“地址”之前加入“香港”，以釐清非香港公司的授權代表必須有香港地址  
Add the words “in Hong Kong” after “address” to clarify that the authorized representative of a non-Hong Kong company must have an address in Hong Kong



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## 其他文本及輕微修訂

### Other textual and minor amendments (2)

例子 –

#### Examples –

- ✓ 訂明附屬企業的“高級人員”的定義  
Provide a definition for “officer” of a subsidiary undertaking
    - ◆ 高級人員 (officer) 就不屬法人團體的附屬企業而言，指——
      - (a) 該企業的管治團體的成員；或
      - (b) 參與該企業的管理的任何其他人。
- “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.



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謝謝!  
Thank you!