

New Companies Ordinance Update

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公司註冊處
COMPANIES REGISTRY

Reporting Exemption 財務報告豁免措施 (1)

- ▶ The new CO (as amended by the Amendment Ordinance) relaxes the criteria for companies to prepare simplified financial statements and directors' reports (Division 2 of Part 9 & Schedule 3)

新條例(經《修訂條例》修訂)放寬公司擬備簡明財務報表及董事報告的準則 (第9部第2分部及附表3)

- ▶ Companies that are qualified for simplified reporting are referred to in the new CO as companies “falling within the reporting exemption”

符合資格擬備簡明報告的公司在新條例中是指「在提交報告方面獲豁免」的公司

Reporting Exemption 財務報告豁免措施 (2)

▶ The exemptions include

豁免事項包括 –

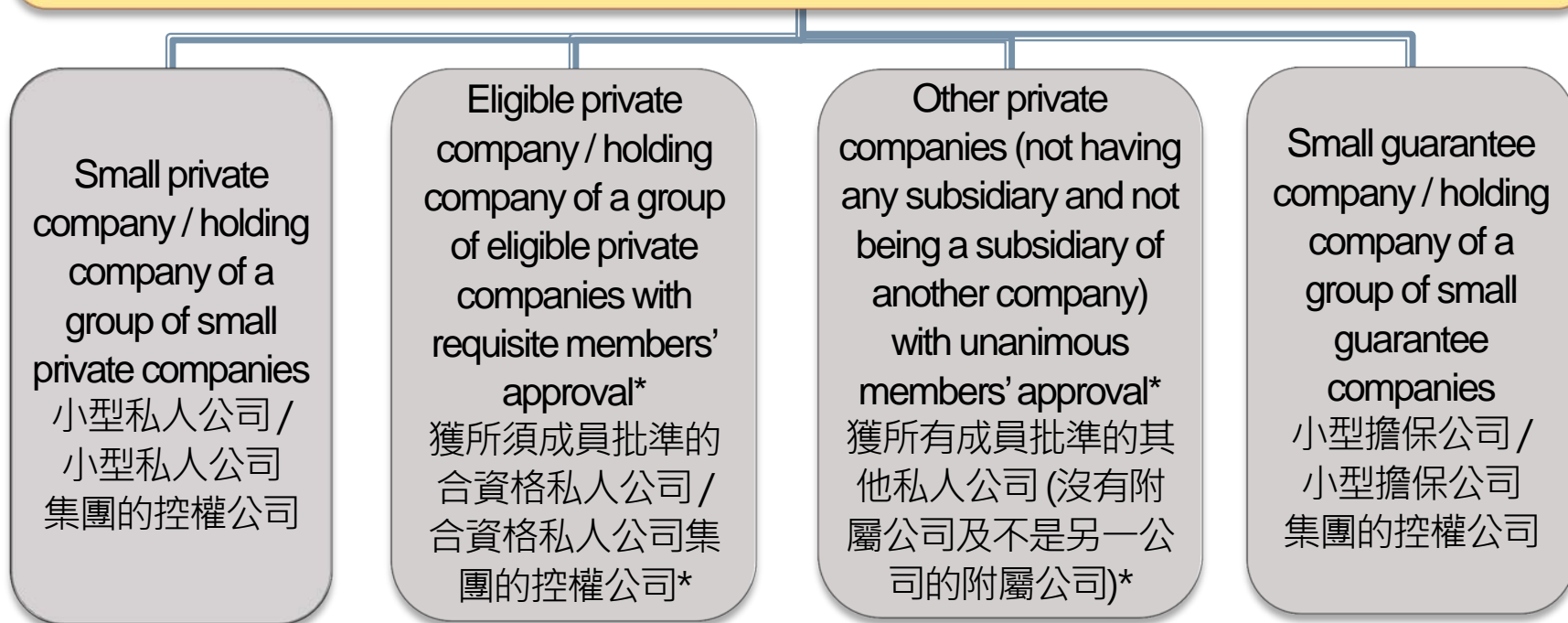
- **s. 380(3)**: no requirement to disclose auditor's remuneration in financial statements 並無規定須在財務報表內披露核數師的酬金
- **s. 380(7)**: no requirement for financial statements to give a “true and fair view” 並無規定須擬備「真實而中肯地反映」的財務報表

Reporting Exemption 財務報告豁免措施 (3)

- **s. 381(2)**: subsidiary undertakings may be excluded from consolidated financial statements in accordance with applicable accounting standards 根據適用的會計準則可將附屬企業豁除於綜合財務報表外
- **s. 388(3)(a)**: no requirement to include business review in directors' report 並無規定須在董事報告內加入業務審視
- **s. 406(1)(b)**: no requirement for auditor to express a “true and fair view” opinion on financial statements 並無規定核數師須述明財務報表是否「真實而中肯地反映」的意見

Reporting Exemption 財務報告豁免措施 (4)

Companies falling within the reporting exemption before the amendments
於修訂之前，在提交報告方面獲豁免的公司



*A copy of the resolution is required to be delivered to the Registrar for registration within 15 days (s. 622(1)(e), (f) & (2))

*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)

Reporting Exemption 財務報告豁免措施 (5)

To provide more flexibility to SMEs to reduce their compliance costs, the Amendment Ordinance allows 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)

為給予中小企更大彈性，以減低遵規成本，《修訂條例》讓另外兩類法團集團的控權公司也可受惠於財務報告豁免措施

(惟控權公司和旗下所有附屬公司均須符合規模準則)

Reporting Exemption 財務報告豁免措施 (6)

2 other types of corporate groups:
另外兩類法團集團:

“mixed groups” **“混合集團”**

Holding companies of corporate groups comprising small private companies or eligible private companies and small guarantee companies

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權公司

non-HK subsidiaries **屬非香港公司的附屬公司**

Holding companies of groups of small private companies, eligible private companies and small guarantee companies or mixed groups with 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權公司

Reporting Exemption 財務報告豁免措施 (7)

Size Criteria 規模準則

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

*Automatic qualification based on size

*按規模自動符合資格

Reporting Exemption 財務報告豁免措施 (8)

Size Criteria 規模準則 – Mixed Group 混合集團

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

Reporting Exemption 財務報告豁免措施 (9)

- ▶ Conditions specified for section 359(1)(c)(iii), (2)(c)(ii) and (3A)(d)
為施行第359(1)(c)(iii)、(2)(c)(ii)及(3A)(d)條而指明的條件 (s. 360)
- For a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company only
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

Accounting-related Provisions 與會計相關的條文 (1)

- ▶ Interpretation (Part 9 – Accounts and Audit)
釋義 (第9部 – 帳目及審計) (s. 357)
- ▶ Parent undertakings and subsidiary undertakings (Schedule 1)
母企業及附屬企業 (附表1)
 - Update the definitions of “holding company” and “parent undertaking” to reflect the current accounting standards
更新有關「控權公司」及「母企業」的定義，以反映現時的會計準則
 - Adopt control as the basis for determining whether an entity is a “subsidiary” of the “parent undertaking”
把控制權確立為決定哪些實體是否「母企業」的「附屬公司」的準則

Accounting-related Provisions 與會計相關的條文 (2)

What is “parent undertaking”?

何謂「母企業」？

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

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

it is a parent of that other undertaking for the purposes of the
accounting standards applicable to its financial statements
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

Accounting-related Provisions 與會計相關的條文 (3)

The definition of “control” (1)

「控制」的定義 (1)

- ▶ 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

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

Accounting-related Provisions 與會計相關的條文 (4)

The definition of “control” (2)

「控制」的定義 (2)

- ▶ An undertaking is presumed, unless the contrary is proved, to have control over another undertaking if —
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 —
 - a) it holds a majority of the voting rights in that other undertaking;
它持有該另一企業的過半數表決權；
 - b) 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;
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；

Accounting-related Provisions 與會計相關的條文 (5)

The definition of “control” (3)

「控制」的定義 (3)

- c) 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
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
- d) 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.
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。

Accounting-related Provisions 與會計相關的條文 (6)

- ▶ Financial year 財政年度 (s. 367)
 - Provide that the financial year of a company may be shortened or lengthened by a period not exceeding 7 days
訂明公司的財政年度可縮短或延長不多於7天
- ▶ Accounting reference period 會計參照期 (s. 368)
- ▶ Primary accounting reference date 初始會計參照日 (s. 369)
 - Specify the first accounting reference period and primary accounting reference date for a dormant company that has ceased to be dormant
訂明一間不再是不活動公司的首個會計參照期及初始會計參照日

Accounting-related Provisions 與會計相關的條文 (7)

- ▶ Directors must prepare financial statements
董事須擬備財務報表 (s. 379)
- Directors must prepare financial statements that
comply with sections 380 & 383 (s. 379(1))
董事須擬備符合第380及383條規定的財務報表
(第379(1)條)

Accounting-related Provisions 與會計相關的條文 (8)

- If the company is a holding company at the end of the financial year, consolidated financial statements must be prepared instead (s. 379(2))

如有有關的財政年度終結時，公司是控權公司，則須擬備綜合財務報表而非財務報表 (第379(2)條)

- ▶ The Amendment Ordinance provides for 2 exceptions
《修訂條例》訂明兩個例外情況

Accounting-related Provisions 與會計相關的條文 (9)

Exception 例外 (1) (s. 379(3)(a) & (3A)(a)):

The company is a wholly owned subsidiary
of another body corporate

公司是另一法人團體的全資附屬公司

Company level
financial statements

公司本身的財務報表

or
或

Consolidated
financial statements

綜合財務報表

Accounting-related Provisions 與會計相關的條文 (10)

Exception 例外 (2) (s. 379(3)(b), (3)(c) & (3A)(b)):

The company is a partially owned subsidiary of another body corporate
公司是另一法人團體的非全資附屬公司



No member requests to prepare consolidated statements /
all members agree not to prepare consolidated statements
並沒有成員要求擬備綜合報表或所有成員均同意不擬備綜合報表



Company level financial statements
公司本身的財務報表

Accounting-related Provisions 與會計相關的條文 (11)

Contents of directors' report: general (s. 390)

董事報告的內容：一般規定 (第390條)

<u>Before 以前</u>	<u>After 之後</u>
<p>A holding company must list the names of the directors of all its subsidiary undertakings in the directors' report</p> <p>控權公司須於董事報告載列旗下附屬企業的董事的姓名</p>	<p>S. 390(4) to (7) is newly added to provide alternative means for the holding company to provide the list on the company's website, or keep the list at the company's RO and make it available for inspection</p> <p>新加入的第390(4)至(7)條增設另一選項，讓控權公司可選擇在其網站提供有關名冊，或在其註冊辦事處備存名冊以供查閱</p>

Accounting-related Provisions 與會計相關的條文 (12)

- ▶ Rights in relation to information 就資料享有的權利 (s. 412)
 - Provide a definition for “officer” in relation to a subsidiary undertaking 訂明附屬企業的「高級人員」的定義
 - ▶ “**officer**”, 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.
 - 「高級人員」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。

Accounting-related Provisions 與會計相關的條文 (13)

- ▶ Avoidance of provisions protecting auditor from liability
廢止免除核數師的法律責任的條文 (s. 415)
- Provide that the reference to performance of the duties of auditor also includes requiring the company to send a copy of a cessation statement to every member under s. 423(2)(b)
訂明提述履行核數師職責包括要求該公司根據第423(2)(b)條，向每名成員送交停任陳述的文本

Accounting-related Provisions 與會計相關的條文 (14)

- ▶ Requirement in connection with publication of financial statements etc.
與發布財務報表等有關連的規定 (s. 436)
- Clarify that “non-statutory accounts” do not include a summary financial report
釐清「非法定帳目」並不包括財務摘要報告

Accounting-related Provisions 與會計相關的條文 (15)

- ▶ Financial Secretary may make regulation regarding revision of financial statements etc.
財政司司長可就財務報表等的修改訂立規例 (s. 450)
- ▶ Companies (Revisions of Financial Statements and Reports) Regulation 《公司(修改財務報表及報告)規例》 (Cap. 622F)
 - 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
就經修改財務報表向核數師作出具誤導性、虛假或具欺騙性的陳述的罪行，劃一與原財務報表的相關罪行所訂的罰則水平

Other Key Amendments 其他主要修訂 (1)

Minutes of directors' meetings and directors' resolutions (s. 481) 董事會議及董事決議的紀錄 (第481條)

<u>Before 以前</u>	<u>After 之後</u>
<p>A company must cause to be recorded and keep minutes of proceedings at directors' meetings 公司須安排記錄及備存董事會議所有議事程序的紀錄</p>	<p>Resolutions passed by directors without a meeting must also be recorded and kept 董事在不舉行會議的情況下通過的決議亦須予以記錄及備存</p>

Other Key Amendments 其他主要修訂 (2)

- ▶ Exception for small payment 例外情況：小額付款 (s. 525)
 - Amend 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

修訂關於就禁止董事失去職位的付款而設的「小額付款」例外情況，以清楚訂明在計算總額時，哪些付款並不計入「小額付款」

Other Key Amendments 其他主要修訂 (3)

Places where records must be kept (s. 619) 須於何處備存紀錄 (第619條)

<u>Before 以前</u>	<u>After 之後</u>
<p>A company must keep minutes of proceedings of general meetings, resolutions of members and written records of decisions of sole member at RO / prescribed place and must notify the Registrar where such records are kept</p> <p>公司須將成員大會的議事程序紀錄、成員決議及唯一成員的決定的書面紀錄備存於註冊辦事處或訂明地方及將有關紀錄的備存地點通知處長</p>	<p>Clarify that such requirements include the following records: minutes of proceedings of directors' meetings, resolutions of directors and written records of decisions of sole director</p> <p>釐清有關規定包括以下紀錄：董事會議的議事程序紀錄、董事決議及唯一董事的決定的書面紀錄</p>

Other Key Amendments 其他主要修訂 (4)

- ▶ Horizontal amalgamation 橫向合併 (s. 681)
 - The new CO introduced a new court-free statutory amalgamation procedure applicable to wholly-owned intra-group companies, where minority shareholders' interest would normally not be an issue
新條例為同一集團內的全資公司的合併另訂不經法院的法定合併程序，因為在這類合併中，通常不會出現有關少數股東權益的爭議

Other Key Amendments 其他主要修訂 (5)

- The Amendment Ordinance clarifies that the court-free procedure for horizontal amalgamation is also available for subsidiaries of a holding company which is incorporated outside HK so long as the merging companies are HK companies

《修訂條例》闡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

Other Key Amendments 其他主要修訂 (6)

- ▶ Offeror may be required to buy out minority shareholders
要約人可被要求全面收購少數股東的股份 (s. 700)
- Clarify 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 that class
闡明在收購要約是關乎某類別股份的情況下，有關90%股份的規定是指該類別股份數目的 90%

Other Key Amendments 其他主要修訂 (7)

- ▶ Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B)

《公司(披露公司名稱及是否有限公司)規例》(第622B章)

- Clarify that if a company has both an English name and a Chinese name, the company may display either its English name or Chinese name

闡明如公司兼有中文名稱及英文名稱，該公司可展示其中文名稱或英文名稱

Other Key Amendments 其他主要修訂 (8)

- S. 4A newly added: if a company registered by both an English name and a Chinese name displays its English registered name and intends to display its name in Chinese, the company must display its Chinese registered name, and vice versa

新加入的第4A條：如兼以中文名稱及英文名稱註冊的公司展示其英文註冊名稱，而該公司擬展示其中文名稱時，則須展示其中文註冊名稱，反之亦然

Other Key Amendments 其他主要修訂 (9)

- ▶ Companies (Revisions of Financial Statements and Reports) Regulation (Cap. 622F)
《公司(修改財務報表及報告)規例》(第622F章)
- Clarify that a person preparing an auditor's report on revised financial statements for a company also has the right to receive notice of a general meeting of the company
闡明為公司擬備經修改財務報表的核數師報告的人，亦有收取公司成員大會通知的權利

Other Key Amendments 其他主要修訂 (10)

- ▶ Companies (Model Articles) Notice (Cap. 622H)
《公司(章程細則範本)公告》(第622H章)
- Clarify that an ordinary resolution of a company is required only for certain types of alteration of the share capital of the company
闡明公司只有某種股本的更改，方須藉普通決議作出

Other Key Amendments 其他主要修訂 (11)

- ▶ Companies (Non-Hong Kong Companies) Regulation (Cap. 622J) 《公司(非香港公司)規例》(第622J章)
 - “Roman script” replaced with “Latin alphabet”
把「羅馬字」改為「拉丁字母」
 - Clarify that the address of an authorized representative of a registered non-Hong Kong company contained in the company’s annual return must be an address in Hong Kong
闡明非香港公司周年申報表載有的該公司的獲授權代表的地址，須是香港地址

Information 資料

Dedicated thematic section on CR's website

公司註冊處網站的專設欄目

https://www.cr.gov.hk/en/companies_ordinance2018/

External Circular No. 1 / 2019

對外通告第1 / 2019號

Highlights on Key Changes

主要變更簡介

Revised specified Form NR2:

“Notice of Location of Registers and Company Records”

經修訂的指明表格NR2: 「登記冊及公司紀錄備存地點通知書」

Thank you!
謝謝!

Companies Registry:
公司註冊處:

www.cr.gov.hk

