

Major amendments introduced by the Companies (Amendment) (No.2) Ordinance 2018

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公司註冊處
COMPANIES REGISTRY

The Companies Ordinance (Cap. 622) (“CO”) 《公司條例》(第622章)

- ▶ Commenced operation in March 2014
於2014年3月實施
- ▶ Provides modern statutory framework for the incorporation and operation of companies in HK
為在香港成立和營運的公司提供現代化的法律框架
- ▶ Introduced a number of measures to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of SMEs
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



The Amendment Ordinance 《修訂條例》

Background 背景

Based on operational experience & feedback from stakeholders
根據運作經驗和各持份者的意見

Amend certain provisions to improve the clarity & operation
of the CO & further facilitate business in HK
修訂若干條文，使條例更清晰和易於實施，並使在香港營商更為方便

Companies (Amendment) (No. 2) Ordinance
2018年公司(修訂)(第2號)條例



The Amendment Ordinance 《修訂條例》

The Legislative Process 立法過程

Consulted relevant stakeholders in 2016, all were generally supportive
在2016年向相關持份者進行諮詢，他們大致支持建議



Enacted by the Legislative Council on 28 November 2018
於2018年11月28日獲立法會通過



Commenced operation on 1 February 2019
於2019年2月1日起生效



The Amendment Ordinance 《修訂條例》

Main Purposes 主要目的

- ▶ Expand the types of companies within the reporting exemption
擴闊在提交報告方面可受惠於豁免措施的公司的類別
- ▶ Improve/Update the accounting-related provisions
改善/更新與會計相關的條文
- ▶ Enhance the administrative, procedural & technical requirements regulating HK and non-HK companies
優化有關規管本地公司及非香港公司的管理、程序及技術規定的相關事宜



Reporting Exemption 財務報告豁免措施 (1)

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

Small private company / holding company of a group of small private companies
小型私人公司 / 小型私人公司集團的控權公司

Eligible private company / holding company of a group of eligible private companies with requisite members' approval*
獲所須成員批準的合資格私人公司 / 合資格私人公司集團的控權公司*

Other private companies (not having any subsidiary and not being a subsidiary of another company) with unanimous members' approval*
獲所有成員批準的其他私人公司 (沒有附屬公司及不是另一公司的附屬公司)*

Small guarantee company / holding company of a group of small guarantee companies
小型擔保公司 / 小型擔保公司集團的控權公司

*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 (2)

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 (3)

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 (4)

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*



Reporting Exemption 財務報告豁免措施 (5)

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 如控權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) 如控權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 如控權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 (6)

- ▶ For a group of eligible private companies, the adoption of simplified reporting will require a resolution by members of the holding company only (s. 360)

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(第360條)



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

- ▶ Update the definitions of “holding company” and “parent undertaking” to reflect the current accounting standards (s. 357 & Schedule 1)
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 (第357條及附表1)
- ▶ Adopt control as the basis for determining whether an entity is a “subsidiary” of the “parent undertaking” (Schedule 1)
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 (附表1)

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)

- ▶ Provide that the financial year of a company may be shortened or lengthened by a period not exceeding 7 days (s. 367)
訂明公司的財政年度可縮短或延長不多於7天 (第367條)
- ▶ Specify the first accounting reference period and primary accounting reference date for a dormant company that has ceased to be dormant (ss. 368 & 369)
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 (第368及369條)

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

- ▶ Provide the following 2 exceptions for holding companies that are required to prepare consolidated financial statements under s. 379(2) –

就根據第379(2)條須擬備綜合財務報表的控權公司，訂明以下兩個例外情況 –



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

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 (9)

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 (10)

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 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 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 (11)

- ▶ Clarify that “non-statutory accounts” do not include a summary financial report (s. 436)
釐清「非法定帳目」並不包括財務摘要報告 (第436條)
- ▶ 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 (s. 450 & Cap. 622F)
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 (第450條及第622F章)

Other Key Amendments 其他主要修訂 (1)

- ▶ A company with both an English name and a Chinese name
兼有中文名稱及英文名稱的公司
 - both names must be stated in its articles (s.81)
章程細則須兼述明該兩個名稱 (第81條)
 - the common seal may be engraved with only its English or Chinese name (s.124)
法團印章可只刻有該英文或中文名稱 (第124條)

Other Key Amendments 其他主要修訂 (2)

Company's articles (s. 76) 公司的章程細則 (第76條)

Before 以前

Must be printed in
English or Chinese
須以中文或英文印刷

After 之後

May be in
electronic form
可採用電子形式



Other Key Amendments 其他主要修訂 (3)

Alteration of company's articles (s. 88) **章程細則的修改(第88條)**

<u>Before 以前</u>	<u>After 之後</u>
Must register within 15 days 須於15天內登記	Exempted from registration if the alteration is in respect of a change of company name only 如僅就其更改公司名稱而對章程細則作出修改，可獲豁免登記



Other Key Amendments 其他主要修訂 (4)

- ▶ The statement of capital should report the share capital position immediately after the relevant change instead of as at the date of change

股本說明須申報緊接有關更改後的股本狀況，而非更改當天的股本狀況

- Return of allotment (s. 142)
配發申報書 (第142條)
- Notice of alteration of share capital (s. 171)
更改股本的通知 (第171條)



Other Key Amendments 其他主要修訂 (5)

- ▶ If all members in a class agree to a variation of the class rights, the variation will take effect as agreed (ss. 180, 182, 188 & 190)
如某類別股份的所有成員同意更改該類別的權利，則有關更改，可如他們所同意具有效力
(第180、182、188及190條)



Other Key Amendments 其他主要修訂 (6)

- ▶ Resolutions passed by directors without a meeting must be recorded (s. 481)
須記錄董事在不舉行會議的情況下通過的決議 (第481條)
- ▶ Minutes of directors' meetings & directors' resolutions must be kept at RO/prescribed place (s. 619)
須在註冊辦事處或訂明地方備存董事會議的議事程序紀錄及董事在不舉行會議的情況下通過的決議 (第619條)

Other Key Amendments 其他主要修訂 (7)

- ▶ Clarify 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 (s. 681)
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 (第681條)

Other Key Amendments 其他主要修訂 (8)

- ▶ 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 (9)

▶ Display of name for non-HK companies

非香港公司展示名稱

- S. 805A and 805B: Empower the FS to make regulations in respect of non-HK companies
第805A及805B條: 賦權財政司司長就非香港公司訂立規例
- Align the obligations of non-HK companies with those of HK companies in the display of company names
劃一非香港公司和香港公司在展示公司名稱的責任



Other Key Amendments 其他主要修訂 (10)

- ▶ Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap. 622M)
《非香港公司(披露公司名稱、成立為法團所在地方及成員的有限法律責任)規例》(第622M章)
 - Modelled on Cap. 622B
以第622B章為藍本
 - Commencement date: 1 August 2019
生效日期: 2019年8月1日

Other Key Amendments 其他主要修訂 (11)

- Re-enacts certain provisions in s. 792 regarding companies in liquidation
重訂第792條內有關非香港公司正進行清盤的事宜
 - ➔ state its name, place of incorporation & members' limited liability in every advertisement in HK
須在於香港的每項廣告內述明公司名稱、成立為法團所在地方和成員的有限法律責任
 - ➔ add “(in liquidation)” or “(正進行清盤)” (as the case may be) after its name when displaying or stating its name pursuant to the provisions of the Regulation
在根據《規例》條文規定展示和述明公司名稱時，在其名稱後加上“(in liquidation)”或“(正進行清盤)”(視屬何情況而定)

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 & 2 / 2019
對外通告第1及2 / 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



公司註冊處
COMPANIES REGISTRY