



The New Companies Ordinance



Important

This pamphlet is intended to highlight some of the major changes under the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong. It should be read in conjunction with the provisions of the new Ordinance and should not be regarded as a substitute for reading it. Full text of the new Ordinance is available at www.elegislation.gov.hk.

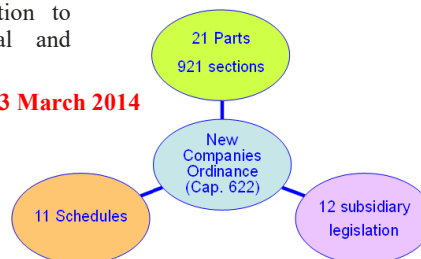
This pamphlet is intended to provide general reference only and is not meant to cater all changes exhaustively. Companies are advised to seek independent professional advice as they see fit.

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The New Law

The new Companies Ordinance (“new CO”)

- Chapter 622 of the Laws of Hong Kong.
- Comprises 21 Parts (921 sections) and 11 Schedules.
- 12 subsidiary legislation to provide for technical and procedural matters.
- Commencement Date: **3 March 2014**



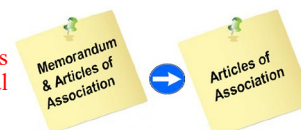
- After commencement of the new CO:
 - The old Companies Ordinance (Cap. 32) (“the old Companies Ordinance”) has been retitled as “*Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)*”.
 - All the core provisions affecting the operation of companies in the old Companies Ordinance were repealed, except those provisions relating to prospectuses, winding-up, insolvency of companies and disqualification of directors.

HIGHLIGHTS OF MAJOR CHANGES

Constitutional Document and Common Seal

Abolition of Memorandum

- Memorandum of Association is abolished for all local companies.**
- Articles of Association is the constitutional document of a company.**
- For companies registered under the old Companies Ordinance (“existing companies”), the provisions in their Memorandum of Association are regarded as provisions of their Articles of Association.
- Table A in the First Schedule to the old Companies Ordinance, in so far as not modified by the provisions of the new CO, continues to apply to existing companies which adopt Table A as their Articles of Association.



Model Articles

- Model Articles are prescribed under the new CO for use by private companies limited by shares, public companies and companies limited by guarantee.

Common Seal

- The keeping and use of a common seal becomes optional.

Share Capital

Mandatory Regime of No-par

- A company’s shares have no nominal value.**
- The new regime applies to all local companies with a share capital.
- The new CO contains transitional and deeming provisions relating to the move from par value shares to no-par value shares to facilitate a smooth transition.
- All shares issued before the commencement date of the new CO are deemed to have no par value. Conversion process is not required.
- Amounts standing to the credit of a company’s share premium account and capital redemption reserve account become part of the company’s share capital.
- Individual companies may review their particular situation to determine if specific changes to their constitutional documents, contracts entered into by the companies etc. are required, having regard to their circumstances.

Statement of Capital

- A statement of capital is included in a return or notice in a specified form, which is required to be delivered for registration whenever there is a change in a company’s share capital, e.g. an allotment of shares or a permitted alteration of share capital.
- The statement is a ‘snapshot’ of a company’s latest share capital. It ensures disclosure of up-to-date share capital information.

Directors

Restricting Corporate Directorship

- Every private company must have at least one director who is a natural person.**
- A grace period of **6 months** after the commencement of the new CO on 3 March 2014 is provided for existing companies to comply with the new requirement.
- Notifications of changes of directors should be delivered for registration in the specified form ND2A within 15 days of the changes.



Long Term Service Contract

- Members’ approval is required for an employment contract of a director exceeding 3 years.

Annual Returns and Accounts

Annual Returns

Private Company

- **No change** in the filing requirements. Annual return should be delivered for registration within **42 days** after the return date, i.e. the anniversary of the date of the company's incorporation.

Public Company and Guarantee Company

If the financial year of a company has begun **before** 3 March 2014 and ends on or after that date:

- The annual return should continue to be delivered for registration within **42 days** after the date of the company's Annual General Meeting (AGM).

For a financial year which begins **on or after** 3 March 2014:

- The annual return should be delivered for registration within **42 days** after the company's return date.
- The return date for a public company is **6 months** after the end of the company's accounting reference period.
- The return date for a guarantee company is **9 months** after the end of the company's accounting reference period.
- Accounting reference period is the period by reference to which the company's annual financial statements are to be prepared.

Notes:

- **Late delivery of annual returns, for all types of companies stated above, is subject to higher registration fees.**
- **An Annual Return in the form of a Certificate of No Change (Forms AR2 or AR3) has become obsolete and will not be accepted for registration under the new CO.**

Accounts and Reports

- Small and medium enterprises (SMEs) may prepare simplified financial statements and directors' reports.
- A private company is qualified for simplified reporting if it satisfies any two of the following conditions:
 - (a) Total annual revenue does not exceed HK\$100 million;
 - (b) Total assets does not exceed HK\$100 million;
 - (c) Average number of employees during the financial year does not exceed 100.
- You are advised to seek professional advice if you wish to prepare simplified financial statements and directors' reports.

Delivery of Documents

- If the Registrar of Companies (the Registrar) has **not** received a document, the document will **not** be regarded as having been delivered to the Registrar in satisfaction of the provisions of the new CO.

Meetings

General Meetings

- Companies may dispense with the holding of AGMs by unanimous shareholders' consent.
- **AGMs should be held with reference to the accounting reference period.**
- A general meeting can be held at more than one location by using any technology.



Charges

- A certified copy of the instrument creating or evidencing a charge **or** a certified copy of any instrument evidencing satisfaction or release of a charge is required to be delivered with the relevant specified form to the Registrar for registration.
- **The time for registration of a charge is shortened from 5 weeks to one month.**
- The instrument and the specified form will both be filed and made available for public inspection.
- Certified copies of instruments will not be returned to presentors after registration.

Note:

- A copy of an instrument is a certified copy if it is certified as a true copy by a director or company secretary or a person authorized by the company or by any other person interested in the charge.



Specified Forms

- A new set of specified forms have been introduced to replace all the old forms.
- New specified forms are denoted by the prefix 'N' in their form numbers for easy identification e.g. Forms NAR1, ND2A, NNC1.

A sample of a specified form, Form NAR1, for Annual Return. The form is titled 'Annual Return' and includes fields for 'Company Name', 'Company Number', and 'Date of Incorporation'. It also has a section for 'Directors' and 'Company Secretary'. The form is presented in a clean, professional layout with clear headings and checkboxes.

Transitional Arrangements on Use of Specified Forms

- The majority of the old forms may continue to be used during the transitional period of three months from 3 March 2014 but some forms have a **shorter or no** transitional period.

Exceptions to Transitional Arrangements

- **Forms NC1 and NC1G** (Incorporation Forms) **cannot be used immediately** upon commencement of the new CO.
- **Form DR1** (Application for Deregistration) **cannot be used immediately** upon commencement of the new CO.
- **Form M1** (Mortgage or charge details) **cannot be used after 8 weeks** from the commencement date of the new CO.
- **Form M2** (Memorandum of satisfaction or release of property from charge) **cannot be used immediately** upon commencement of the new CO.
- **Form N12** (Statement of approved name for carrying on business in Hong Kong by a non-Hong Kong company) **cannot be used immediately** upon commencement of the new CO.

**Visit Companies Registry's website
at www.cr.gov.hk
for information and updates on the
new Companies Ordinance**

