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## **Companies Registry External Circular No. 3 / 2014**

### **The New Companies Ordinance (Cap. 622) - A Guide on Directors' Duties**

This circular explains the revisions made to “A Guide on Directors’ Duties” (“the Guide”) for implementing the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong (“the new CO”). The new Guide shall be effective upon commencement of the new CO on 3 March 2014.

#### **Updating of the Guide**

2. The Companies Registry (“the Registry”) first issued the Guide (previously entitled “Non-statutory Guidelines on Directors’ Duties”) in 2004 to outline the general principles on directors’ duties in the performance of his functions and exercise of his powers. Consequent upon a review by the Standing Committee on Company Law Reform, the contents of the Guide were updated in July 2009.

3. Under the new CO, the requirement for a memorandum of association is abolished and a company is only required to have articles of association. The references to “memorandum” in Principles 3 and 10 of the Guide are deleted.

4. Principle 4 of the Guide outlines the objective and subjective standard required as regards the director’s duty to exercise reasonable care, skill and diligence. The duty to exercise reasonable care, skill and diligence is now set out statutorily in section 465 of the new CO.

5. Principle 6 of the Guide is revised to reflect the widening of the ambit of disclosure under section 536 of the new CO to cover disclosure of the extent of a director's interest in transactions in which the director has a material interest.
6. Principle 11 of the Guide is revised to reflect the modified requirement to keep the company's accounting records as set out in section 373 of the new CO, which replaces the requirement to keep the company's books of accounts under section 121 of the existing Companies Ordinance (Cap. 32).
7. The new CO restates with modifications most of the provisions in Cap. 32 concerning the formation and operation of live companies in Hong Kong. Upon the commencement of the new CO on 3 March 2014, such provisions in Cap. 32 will be repealed. The remaining provisions in Cap. 32 will predominantly contain company winding up and insolvency provisions as well as the provisions relating to prospectuses. Cap. 32 will be retitled "Companies (Winding Up and Miscellaneous Provisions) Ordinance". The reference in Principle 11 of the Guide to the title of Cap. 32 is updated to "Companies (Winding Up and Miscellaneous Provisions) Ordinance".
8. The new Guide can be downloaded from the websites of the Registry ([www.cr.gov.hk](http://www.cr.gov.hk)), the Hong Kong Exchanges and Clearing Limited ([www.hkex.com.hk](http://www.hkex.com.hk)), the Securities and Futures Commission ([www.sfc.hk](http://www.sfc.hk)), the Official Receiver's Office ([www.oro.gov.hk](http://www.oro.gov.hk)) and the Hong Kong Monetary Authority ([www.hkma.gov.hk](http://www.hkma.gov.hk)). Hard copies of the new Guide will be available at the Registry on 14<sup>th</sup> floor, Queensway Government Offices, 66 Queensway, Hong Kong, in March 2014. The new Guide should be read with the relevant provisions of the new CO.

## **Enquiries**

9. Enquiries concerning this circular should be directed to Mr YU Kwok Kuen, Assistant Registry Manager (Registration) 2 at (852) 2867 5365 / kkyu@cr.gov.hk.

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