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## **Companies Registry External Circular No. 4 / 2014**

### **The New Companies Ordinance (Cap. 622) - Major Changes in Filing Requirements**

**This circular sets out the major changes relating to filing requirements upon commencement of the new Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (“the new CO”) on 3 March 2014.**

#### **Delivery of documents (section 35(5))**

2. Pursuant to section 35(5) of the new CO, if the Registrar of Companies (“the Registrar”) has not received a document, the document is to be regarded as not having been delivered to the Registrar in satisfaction of the provision of the new CO that requires or authorises the document to be delivered to the Registrar.

3. Special attention should be paid to the delivery of annual return by post. If an annual return is delivered by post, the annual return will not be regarded as having been delivered to the Registrar in satisfaction of the filing requirements if it has not been received by the Registrar. Substantially higher registration fees are payable for late delivery.

#### **Unsatisfactory documents (sections 31 and 35)**

4. Section 31 of the new CO sets out the circumstances under which a document delivered to the Registrar for registration is regarded as unsatisfactory. The notable examples include the following circumstances, where:

- (a) the document is not accompanied by the fee payable for the registration;
- (b) the document, or any signature on the document, is incomplete or incorrect; or is altered without proper authority; or
- (c) the information contained in the document is internally inconsistent; or is inconsistent with other information on the Companies Register or other information contained in another document delivered to the Registrar.

5. Under section 35 of the new CO, if the Registrar is of the opinion that a document delivered for registration under an Ordinance is unsatisfactory, the Registrar may:

- (a) refuse to accept the document;
- (b) refuse to register the document and return the document to the person who delivered it for registration;
- (c) advise that the document be appropriately amended or completed, and be redelivered for registration with or without a supplementary document, or a fresh document be delivered for registration in its place.

### **Time limit for filing**

6. Currently under the existing Companies Ordinance (Cap. 32), some provisions prescribe a period of 14 days and some provisions prescribe 15 days for the delivery of documents to the Registrar.

7. To streamline the filing requirements, the requirements under various provisions in the existing Companies Ordinance (Cap. 32) for delivery of documents in 14 days are changed to 15 days across-the-board under the new CO. Some of the notable examples are:

- (a) delivery of Form ND2A for reporting appointment or cessation of office of the company secretary or director of a local company;
- (b) delivery of Form ND2B for reporting changes in particulars of the company secretary or director of a local company; and
- (c) delivery of Form NR1 for reporting any change of address of a company's registered office.

## **Company Formation and Articles of Association**

8. Following the abolition of the Memorandum of Association for all local companies under the new CO, the Articles of Association is the sole constitutional document of a company and must contain the mandatory clauses as specified in the new CO (“Mandatory Articles”) (see **Annex 1**). For incorporation of a company under the new CO, a copy of the Articles of Association of the company has to be delivered for registration together with an incorporation form (see **Annex 1** for the adoption and application of Model Articles). For existing companies, the deeming provisions under section 98 of the new CO will ensure compliance with the requirement to have Mandatory Articles.

### **Statement of Capital (section 201)**

9. To enhance transparency, a statement of capital 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 included in the specified forms of the relevant returns or notices. It is a ‘snapshot’ of a company’s latest share capital and serves to ensure disclosure of up-to-date share capital information.

### **Changes relating to Directors and Company Secretaries**

10. Appointment, cessation of office (including resignation) and change in particulars of directors or company secretaries should be reported to the Registrar in specified forms within 15 days instead of 14 days (sections 645 and 652).

11. Company Secretaries who are individuals are only required to report their correspondence addresses to the Registrar instead of residential addresses (sections 650 and 652).

### **Annual Returns – Public Companies and Guarantee Companies (section 662)**

12. For public companies and companies limited by guarantee, the requirement under the new CO is to deliver an annual return in respect of every financial year instead of calendar year. The annual return is required to be delivered with certified true copies of the relevant financial statements, directors’ report and auditor’s report.

13. The new requirements apply to the first financial year of companies that begins on or after the commencement date of the new CO and all subsequent financial years (section 121(1) of Schedule 11).

14. If the financial year of a company begins before the commencement date of the new CO and ends on or after that date, the annual return should continue to be delivered within 42 days after the date of the company's Annual General Meeting ("AGM").

15. For a financial year which begins on or after the commencement date of the new CO:

- The annual return should be delivered 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 company limited by guarantee is 9 months after the end of the company's accounting reference period; and
- The accounting reference period is the period by reference to which the company's annual financial statements are to be prepared (sections 662 and 368).

16. Late submissions of annual returns for all types of companies, including companies limited by guarantee, are subject to higher registration fees. An escalating scale of annual registration fee, which is the same as the one applicable to a private company limited by shares, is introduced for companies limited by guarantee (see **Annex 2**).

17. An Annual Return in the form of a Certificate of No Change (Forms AR2 or AR3) will become obsolete and will not be accepted for registration under the new CO.

### **Annual Returns – Private Companies (section 662)**

18. There is no change in the requirement to deliver annual returns of a local private company. The requirement is the same as that under the existing Companies Ordinance (Cap. 32). The annual return should be delivered for registration within 42 days after the anniversary of the date of the company's incorporation pursuant to sections 662(1) and (2) of the new CO.

### **Registration of Charges**

19. A certified copy of the instrument creating or evidencing a charge or, if the company notifies the Registrar of the satisfaction or release of a charge, 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 (sections 335, 336, 338 to 340 and 345). The instrument and the specified forms will both be

registered and made available for public inspection and certified copies of instruments will not be returned to presentors after registration.

20. The time for registration of a charge is shortened from 5 weeks to one month (sections 335, 336 and 338 to 340).

### **Introduction of New Forms**

21. To facilitate the implementation of the new CO, the Registrar has specified new forms for use under the new CO. The new forms have been published in the Gazette (G.N.6495) on 1 November 2013. They are either revisions of existing forms or new forms introduced pursuant to the requirements under the new CO. The new forms are designed with reference to the format and form numbers of existing forms and are denoted by the prefix “N” for easy identification.

22. For details of the introduction of newly specified forms and the transitional arrangements on the use of specified forms, please refer to Companies Registry External Circular No. 2 / 2013.

### **Enquiries**

23. This circular is intended to provide a general guide on the major changes relating to filing requirements under the new CO. Further details on the subject are available in the “New Companies Ordinance > Highlights on Key Changes” section of the Companies Registry’s website ([www.cr.gov.hk](http://www.cr.gov.hk)). For enquiries on the new CO, a dedicated hotline at 3142 2822 has been set up to answer enquiries from Monday to Saturday 9:00 a.m. to 8:00 p.m. (excluding public holidays). Email enquiries can be sent to [cr.nco@cr.gov.hk](mailto:cr.nco@cr.gov.hk).

**Ms Ada LL CHUNG**  
**Registrar of Companies**

c.c. CR HQ/8-1/6

## **Mandatory Articles**

### **The Articles of Association of companies must contain the following Mandatory Articles:**

- Company name (section 81)
- Members' liabilities (i.e. limited or unlimited), except for an existing unlimited company (section 83)
- Liabilities or contribution of members (for limited companies), except for an existing company which is deemed to be a company limited by shares under section 4(3) of Companies Ordinance (Cap. 32) (section 84)
- Capital and initial shareholdings (for companies with a share capital incorporated under the new CO) (section 85(1) and section 8 of Part 5 of Schedule 2 to the new CO)
- For an association to be incorporated with a licence granted under section 103 or a limited company granted with such a licence, its Articles of Association must state the company's objects when the licence remains in force (section 82).

### **Model Articles**

- Model Articles are prescribed under the new CO for use by private companies limited by shares, public companies limited by shares and companies limited by guarantee. They are set out in the Companies (Model Articles) Notice, Cap. 622H.
- A company may adopt any or all of the provisions of the Model Articles appropriate to the type of company being formed. The appropriate Model Articles will apply insofar as the articles registered by the company upon incorporation do not exclude or modify them (section 80).
- The Model Articles will be in addition to the Mandatory Articles that a company is required to have.

**Annual Registration Fee  
for annual return of a company limited by guarantee**

	<u>Fee</u>
Annual registration fee for an annual return delivered under section 662(3) of the new Companies Ordinance –	
(a) if the annual return is delivered within 42 days after the company's return date	\$105
(b) if the annual return is delivered more than 42 days after but within 3 months after the company's return date	\$870
(c) if the annual return is delivered more than 3 months after but within 6 months after the company's return date	\$1,740
(d) if the annual return is delivered more than 6 months after but within 9 months after the company's return date	\$2,610
(e) if the annual return is delivered more than 9 months after the company's return date	\$3,480