

**New Companies Ordinance**  
**Briefing Notes on**  
**Companies (Model Articles) Notice**

**BACKGROUND**

Standard articles of association are contained in Schedule 1 to the Companies Ordinance (Cap. 32) (“Cap. 32”). Specifically, Table A provides the standard articles for companies limited by shares. Part I contains provisions applicable to a company limited by shares not being a private company whereas Part II is applicable to a private company limited by shares (with provisions in Part I incorporated into Part II by reference). They apply to companies that do not have their own articles excluding or modifying the statutory standard articles. Companies limited by guarantee may rely upon the form of articles set out in Table C to Schedule 1, but these, unlike Table A, do not apply by default and must be formally adopted by a company.

2. Section 78 of the new Companies Ordinance (“new CO”) empowers the Financial Secretary to prescribe model articles for companies. Section 80 thereof provides that on the incorporation of a limited company, the model articles prescribed for the type of company to which the company belongs and that are for the time being in force, so far as are applicable, form part of the company’s articles if the company’s articles do not exclude or modify the model articles.

**THE SUBSIDIARY LEGISLATION**

**Companies (Model Articles) Notice (“the Notice”)**

3. The Notice prescribes the model articles of association which a company to be incorporated under the new CO may adopt in part or in its entirety at its volition, and which will apply by default if not excluded or modified by specific articles registered by the company. The model articles will have no impact on existing companies, including those which have adopted the standard articles provided in Schedule 1 to Cap. 32<sup>1</sup>.

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<sup>1</sup> An existing company may, however, amend its articles to follow the model articles at its volition.

4. To make the model articles more user-friendly, the Notice prescribes three distinctive sets of model articles as follows –

- (a) *Schedule 1* consists of 105 articles for public companies limited by shares;
- (b) *Schedule 2* consists of 84 articles for private companies limited by shares; and
- (c) *Schedule 3* consists of 57 articles for companies limited by guarantee.

5. Compared with the standard articles under Cap. 32, the model articles have been substantially re-organised to enhance clarity, coherence and ease of reference. Articles concerning similar matters are grouped together under different broad headings. The topics are covered in the following sequence –

- (a) directors and company secretary, and in particular how directors are to make decisions;
- (b) members' rights and the proceedings at general meetings;
- (c) shares and distributions (not applicable to the model articles for companies limited by guarantee); and
- (d) miscellaneous matters, including communications to and by the company.

### Major Changes

6. In terms of contents, the major changes introduced in the model articles include, for example –

- (a) in respect of decision-making by directors, new articles have been added for public companies limited by shares in Schedule 1 to provide the detailed procedures for written resolutions. For private companies limited by shares and companies limited by guarantee, a new article dealing with unanimous decisions of directors is added. Articles dealing with the appointment and removal of alternate directors are also added. The articles on voting at directors' meetings where there is a conflict of interests have been updated to take into account the changes in Part 11 of the new CO and other

changes. Articles on directors' meetings have also been revised to cater for dispersed meetings, i.e. where directors meet via telecommunication or video conferences, or with the aid of other communication technology;

- (b) in respect of the proceedings at general meetings, an article is added on the rights of directors and anyone who is not a member of the company to attend and speak at general meetings. The articles relating to the effect, validity and the delivery of relevant notices for proxies have been set out in greater details. The articles on the contents and timeframe for notices of meetings have also been revised to align with those provided for in the new CO; and
- (c) in respect of share capital, the articles relating to forfeiture of partly-paid shares are set out in greater details and an article has been added to deal with surrender of shares in lieu of enforcement of a call for payment. Amendments have also been made to reflect provisions in the new CO, providing for greater flexibility resulting from migration to no-par regime.

7. The model articles set out in the Notice are in addition to the mandatory articles that companies are required to have under the new CO. Sections 81 to 85 of the new CO set out these mandatory articles which include:

- (a) the name of the company (section 81);
- (b) the objects of the company, if the company has been granted a licence to dispense with the use of the word "limited" in its name under section 103 of the new CO (section 82);
- (c) details of members liabilities (section 83);
- (d) details of liabilities or contribution of members (section 84); and
- (e) details of initial capital and initial shareholding (section 85)