

The New Companies Ordinance (Cap. 622) Overview

The new Companies Ordinance (Cap. 622) (“new CO”) is divided into 21 parts –

- (a) **Part 1 (Preliminary)** sets out the title of the new CO, the commencement provision, and the definitions of various terms and expressions that are used in the new CO.
- (b) **Part 2 (Registrar of Companies and Companies Register)** deals with the general functions and powers of the Registrar of Companies (“the Registrar”). It groups the existing provisions relating to the office of the Registrar and the register maintained by the Registrar. It clarifies the powers of the Registrar to maintain and safeguard the integrity of the register, having regard to the development of the Companies Registry (CR)’s information system which will enable the electronic delivery of documents to or by the Registrar. This Part contains provisions for non-disclosure of residential addresses and full identity card / passport numbers in the register to enhance protection of personal data¹.
- (c) **Part 3 (Company Formation and Related Matters, and Re-registration of Company)** deals with company formation, registration and related matters. This Part also provides for new requirements for the articles of association of a company following the abolition of the memorandum of association. It also makes the keeping and use of a common seal by a company optional to facilitate business operation.
- (d) **Part 4 (Share Capital)** deals with the core concepts about share capital, its creation, transfer and alteration. In particular, this Part introduces a mandatory no-par regime for all companies with a share capital to modernise the share capital regime.
- (e) **Part 5 (Transactions in relation to Share Capital)** contains the provisions concerning capital maintenance (reduction of capital and purchase of a company’s own shares) and the giving of financial assistance by a company to another party for the purpose of acquiring shares of that company or its holding company. To facilitate business operation, this Part streamlines and rationalises the existing rules by introducing new exceptions based on the solvency test for reduction of capital, buy-backs and financial assistance.
- (f) **Part 6 (Distribution of Profits and Assets)** deals with the distribution of profits and assets to members. The usual form of distribution is through payment of dividends. While there is no fundamental change to the current rules, the modernised language should facilitate easier understanding.
- (g) **Part 7 (Debentures)** deals with a miscellany of matters concerning debentures. This Part covers, for example, the register of debenture holders, rights to inspect and make copies of the register, debenture, trust deed and other documents, and meetings of debenture holders. It introduces new

¹ See Remarks in Highlights on Part 2.

requirements for registration of the allotment of debentures and filing of a return of allotment, to align with similar requirements for shares.

- (h) **Part 8 (Registration of Charges)** deals with the registration of charges by both Hong Kong and registered non-Hong Kong companies. It sets out the types of charges which require registration, the registration procedures and the consequences of non-compliance. It also contains provisions to regulate related matters, such as requiring companies to keep, and allow inspection of, copies of instruments of charges and registers of charges. It introduces improvements to the current registration system, including revising the list of registrable charges and requiring a certified copy of the charge instrument to be registered and available for public inspection to enhance transparency.
- (i) **Part 9 (Accounts and Audit)** contains the accounting and auditing provisions in relation to the keeping of accounting records, the preparation and circulation of annual financial statements, directors' and auditor's reports and the appointment and rights of auditors. New provisions are introduced to facilitate SMEs to take advantage of simplified accounting and reporting requirements, to require public and large companies to include an analytical business review in directors' reports, and to enhance auditors' right to information. This Part also introduces new sanctions relating to the contents of auditor's reports.
- (j) **Part 10 (Directors and Company Secretaries)** deals with directors and company secretaries of a company. It mainly reorganises, with some modifications, the existing provisions of the Companies Ordinance (Cap. 32) relating to the appointment, removal and resignation of directors and company secretaries. This Part also clarifies the standard of directors' duty of care, skill and diligence.
- (k) **Part 11 (Fair Dealing by Directors)** covers fair dealing by directors and deals with specified situations in which a director is perceived to have a conflict of interest. It governs transactions involving directors or their connected entities which require members' approval (namely loans and similar transactions, long-term service contracts and payments for loss of office), and covers disclosure by directors of material interests in transactions, arrangements or contracts. This Part introduces new statutory provisions requiring members' approval for director's long-term employment by a company. It also requires disinterested members' approval in the case of public companies and subsidiaries of public companies.
- (l) **Part 12 (Company Administration and Procedure)** governs resolutions and meetings, registers (including registers of members, directors and company secretaries), company records, registered offices, publication of company names and annual returns. It introduces a number of changes to enhance shareholders' engagement in and the transparency of the decision-making process of a company. This Part also revises the provisions relating to registers, registered offices and annual returns to suit the needs of the modern community.

- (m) **Part 13 (Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back)** restates, with some amendments, the provisions of Companies Ordinance (Cap. 32) concerning schemes of arrangement, reconstructions or amalgamations of a company with other companies, and compulsory acquisitions. The “headcount test” for approving a scheme of arrangement that involves a takeover offer or a general offer to buy back shares is replaced by a new requirement that the dissenting votes do not exceed 10% of the votes attaching to all disinterested shares. For other schemes, the headcount test is retained, with a new discretion given to the court to dispense with the test for members’ schemes in appropriate circumstances. It also introduces a court-free statutory amalgamation procedure for wholly-owned intra-group companies.
- (n) **Part 14 (Remedies for Protection of Companies’ or Members’ Interests)** consolidates the existing provisions concerning shareholder remedies under the Companies Ordinance (Cap. 32). The scope and operation of the unfair prejudice remedy are refined.
- (o) **Part 15 (Dissolution by Striking Off or Deregistration)** sets out the provisions on striking off and deregistration of defunct companies, restoration of companies that have been struck off or deregistered, and related matters (including treatment of properties of dissolved companies). It introduces changes which streamline the existing procedures for striking-off and restoration of companies. This Part also imposes new requirements to prevent any possible abuse of the deregistration procedure.
- (p) **Part 16 (Non-Hong Kong Companies)** deals with companies incorporated outside Hong Kong which have established a place of business in Hong Kong. There is no fundamental change to the current rules.
- (q) **Part 17 (Companies Not Formed, but Registrable, under this Ordinance)** deals with companies not formed under the new CO or a former Companies Ordinance but are eligible to be registered under the new CO. There is no fundamental change to the current rules.
- (r) **Part 18 (Communications to and by Companies)** builds on the rules governing communications by a company to another person introduced in the Companies (Amendment) Ordinance 2010. The new rules will also facilitate electronic communications by a company’s members and debenture holders to the company.
- (s) **Part 19 (Investigations and Enquiries)** deals with investigations and enquiries into a company’s affairs by inspectors and the Financial Secretary. It modernises the existing provisions by reference to similar powers under the Securities and Futures Ordinance (Cap. 571) and the Financial Reporting Council Ordinance (Cap. 588). This Part also provides a new power for the Registrar to obtain documents, records and information for the purposes of ascertaining whether any conduct that would constitute specified offences relating to giving false or misleading statement has taken place. This new power will facilitate enforcement and safeguard the integrity of the public register.

- (t) **Part 20 (Miscellaneous)** contains a number of miscellaneous provisions, including miscellaneous offences and the new power for the Registrar to compound specified offences.

- (u) **Part 21 (Consequential Amendments, and Transitional and Saving Provisions)** deals with the transitional and saving provisions and consequential amendments that are required for the commencement of the new CO.