

Part 2

Registrar of Companies and Companies Register

INTRODUCTION

Part 2 (Registrar of Companies and Companies Register) of the new Companies Ordinance (Cap. 622) (“new CO”) contains provisions relating to the Registrar of Companies (“the Registrar”), the Companies Register and the registration of documents by the Registrar.

POLICY OBJECTIVES AND MAJOR CHANGES

2. Part 2 contains initiatives that aim at improving regulation, facilitating business and modernising the law, namely, –

- (a) Clarifying the Registrar’s powers in relation to the registration of documents (paragraphs 4 to 6);
 - (b) Clarifying and enhancing the Registrar’s powers in relation to the keeping of the Companies Register (paragraphs 7 to 10);
 - (c) Providing expressly for removing information on the Companies Register (paragraphs 11 to 13); and
 - (d) Withholding residential addresses of directors and company secretaries and full identification numbers of individuals from public inspection. [Please see remarks on page 15]
3. The details of the major changes in Part 2 are set out in paragraphs 4 to 13 below.

Clarifying the Registrar’s powers in relation to the registration of documents (Sections 31, 35 to 38)

Position under the Companies Ordinance (Cap. 32) (“Cap. 32”)

4. Under section 348 of Cap. 32, the Registrar may refuse to register a document if it is manifestly unlawful or ineffective, or is incomplete or altered; or if any signatures on the document, or digital signature accompanying the document is incomplete or altered. The scope for refusal of registration is not entirely clear.

Position under the new CO

5. The grounds of refusal are clarified to empower the Registrar to refuse to register an unsatisfactory document or to withhold registration of a document pending further amendments or provision of further particulars.

Key provisions in the new CO

6. **Section 31** sets out the situations where a document is considered to be unsatisfactory. It consolidates and clarifies the existing grounds on which the Registrar may refuse the registration of a document. For example, it is expressly provided that a document is unsatisfactory if it is internally inconsistent or inconsistent with the information already on the Companies Register. **Section 35** makes it clear that if the Registrar refuses to accept a document, has not received a document or refuses to register a document, the document is to be regarded as not having been delivered to the Registrar as required under the new CO.

Section 36 further provides that the Registrar may withhold the registration of an unsatisfactory document and request the person who delivered the document to take certain remedial actions within a specified period, such as producing further information or evidence, amending or completing the document or applying for a court order.

Clarifying and enhancing the Registrar's power in relation to the keeping of the Companies Register (Sections 39 to 44)

Position under Cap. 32

7. At present, the Registrar adopts administrative measures in appropriate cases to accept the filing of "amended" documents to rectify documents which contain errors and to annotate the information on the Companies Register so as to provide supplementary information.

Position under the new CO

8. The following powers of the Registrar are put on an express statutory footing and are provided for expressly –

- (a) power to annotate information on the Companies Register to provide supplementary information such as the fact that the document in question has been replaced or corrected; and

- (b) power to request companies or their officers to resolve inconsistencies in information on the Companies Register or to provide updated information.

Key provisions in the new CO

9. **Section 39** enables the Registrar to notify a company of an apparent inconsistency in the information relating to the company on the Companies Register and to require it to take steps to resolve the inconsistency within a specified period. **Section 40** empowers the Registrar to require a person to update his or her information on the Companies Register. Under both provisions, failure of the company and every responsible person concerned to comply with the Registrar's requirements is an offence. It is a defence to establish that the person took all reasonable steps to secure compliance with the requirements.

10. **Section 41** gives the Registrar power to, either on her own initiative or on an application by a company, rectify a typographical or clerical error contained in any information on the Companies Register. If the rectification is made upon an application by a company, the Registrar may rectify the error by registering a document showing the rectification delivered by the company. **Section 44** provides that the Registrar may make a note in the Companies Register for the purpose of providing information in relation to such a rectification.

Providing expressly for the power of the Court to remove information from the Companies Register (Section 42)

Position under Cap. 32

11. There is no express provision in Cap. 32 on the court's power to order the Registrar to remove inaccurate or forged information from the Companies Register. However, it has been decided by the court that in an appropriate case, the court may direct the Registrar to remove a document from the Companies Register or to accept a document for registration.

Position under the new CO

12. An express provision has been introduced to provide that the court may order the removal of any information from the Companies Register.

Key provisions in the new CO

13. **Section 42** provides that the court may, on application by any person, direct the Registrar to rectify any information on the Companies Register or to remove any information from it if the court is satisfied that the information is inaccurate or forged, or derives from anything that is invalid or ineffective or that has been done without the company's authority. When making an order of removal of any information from the Companies Register, the court may make any consequential order that appears just with respect to the legal effect, if any, to be accorded to the information by virtue of its having appeared on the Companies Register.

Remarks

As some members of the public have raised concerns about the new arrangement with respect to inspection of directors' personal information on the Companies Register, the Administration has submitted a paper on the proposed way forward to the LegCo Panel on Financial Affairs on 28 March 2013 (LC Paper No. CB(1)788/12-13(01), whereas the Panel has subsequently discussed the matter at its meeting on 8 April 2013. Having regard to the discussion at that meeting and members' views, the Administration will accord priority to the tasks necessary for commencing the new CO in the first quarter of 2014 as scheduled, and consider matters relating to the new arrangement thereafter. The Gazette notice for the commencement of the new CO does not include provisions relating to the restricted disclosure of residential addresses of directors and identification numbers of individuals.