

# **New Companies Ordinance**

## **Briefing Notes on Part 17**

### **Companies not Formed, but Registrable, under this Ordinance**

#### **INTRODUCTION**

Part 17 (Companies not Formed, but Registrable, under this Ordinance) of the new Companies Ordinance (“new CO”) contains provisions relating to companies not formed under the new Ordinance or a former Companies Ordinance but eligible to be registered under the new CO.

#### **POLICY OBJECTIVES AND MAJOR CHANGES**

2. There is no significant change to the Companies Ordinance (Cap. 32) (“Cap. 32”) introduced under Part 17. Part 17 mainly restates, with some modifications, Part IX of Cap. 32<sup>1</sup>, which provides for the registration of companies which are/have been formed in pursuance of any Ordinance other than Cap. 32 or a former Companies Ordinance. The sequence of the provisions in Part IX of Cap. 32 is re-arranged in a more logical and user-friendly order. The archaic provisions on “joint stock company” under sections 310 to 312 of Cap. 32 have been removed. Further details are set out in paragraphs 3 to 5 below.

#### **Removing archaic provisions on “joint stock company”**

##### Position under Cap. 32

3. Under section 310 of Cap. 32, a joint stock company with limited liability, formed pursuant to any Ordinance (other than Cap. 32 or any of its predecessors), or letters patent, or being otherwise duly constituted according to law, and consisting of one or more members, may register under Cap. 32 as a company

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<sup>1</sup> Except sections 324 and 325 which will remain in the Companies (Winding Up and Miscellaneous Provisions) Ordinance as they are closely related to the winding-up provisions.

limited by shares. Section 311 sets out the definition of a joint stock company while section 312 sets out the requirements for registration by such a company.

4. Sections 310 to 312 of Cap. 32 originated from the United Kingdom (“UK”) Companies (Consolidation) Act 1908, which allowed joint stock companies formed under the earlier UK Joint Stock Companies Acts of 1844 and 1856 to register as a company under the subsequent UK Companies Acts. The UK Joint Stock Companies Acts did not apply in Hong Kong, and there was no equivalent legislation in Hong Kong. As far as we can ascertain, currently there is no incorporated joint stock company in Hong Kong. The chance of unincorporated joint stock companies being in existence is very remote. If there had been any such companies in existence which wished to register under Cap. 32, they would have done so by now.

#### Position under the new CO

5. On the basis of the above, and for the sake of simplicity, the detailed provisions on registration of joint stock companies are repealed. If, despite the remote possibility, there were still in existence any unincorporated joint stock companies, they could simply dissolve the companies and incorporate new ones if they wish to become companies under the new CO.

#### Key Provisions in the new CO

6. **Section 807** provides that an eligible company may be registered as an unlimited company or a company limited by guarantee. The expression “eligible company” is defined in section 806 as a company formed after 1 May 1865 in pursuance of an Ordinance other than the new CO or a former CO, or otherwise constituted after that date according to law.

7. **Sections 808 to 810** set out the requirements and restrictions regarding registration. **Section 808** makes it clear that a company whose members’ liability is limited by an Ordinance or otherwise according to law will not be registered under this Part.

8. An eligible company is regarded as having been incorporated under the new CO as an unlimited company or a company limited by guarantee (as the case may be) upon registration. Registration does not operate to create a

new legal entity for the eligible company nor does it affect its property or its rights and liabilities in respect of any debt or obligation incurred by or on behalf of the company before registration (**Section 814**). Any action or other legal proceedings by or against the eligible company or any of its officers or members that are pending at the time of registration may be continued in the same manner as if the registration had not taken place (**Section 815**).

## **TRANSITIONAL AND SAVING ARRANGEMENTS**

9. A pending application for registration under section 310 of Cap. 32 is regarded as an application for registration under the new CO. If the applicant is not registered as a limited company or is registered as a limited company, but the liability of the shareholders was limited by some other Ordinance before registration, no registration fee is payable (**Schedule 11 section 141**).

Companies Registry  
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