

PART 17

COMAPNIES NOT FORMED, BUT REGISTRABLE, UNDER THIS ORDINANCE

Introduction

1. Part 17 deals with companies not formed under the new Ordinance or a former Companies Ordinance but eligible to be registered under the new Ordinance. It mainly restates, with some modifications, Part IX of the CO, except sections 324 and 325. Part IX provides for the registration of companies (consisting of one or more members) which are/have been formed in pursuance of any Ordinance other than the CO or a former CO (i.e. Companies Ordinance 1865 and Companies Ordinance 1911); or otherwise constituted according to law. Sections 324 and 325 are closely related to sections 181 and 186 of the CO on winding-up and will be tackled in Phase II of the CO rewrite exercise together with other winding-up related provisions.
2. There is no significant change to be introduced under this Part. Nevertheless, we have taken the opportunity to remove the archaic provisions on “joint stock company” under sections 310 to 312 of the CO as there does not appear to be a practical need for them.

Proposed Changes

Removing archaic provisions on “joint stock company”

3. At present, under section 310 of the CO, a joint stock company with limited liability, formed pursuant to any Ordinance (other than the CO or any of its predecessors), or letters patent, or being otherwise duly constituted according to law, and consisting of one or more members, may at any time register under the CO as a company limited by shares. A joint stock company is defined in section 311 of the CO as “a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock,

and no other persons...”. Section 312 sets out the requirements for registration by such a company.

4. The origin of sections 310 to 312 of the CO can be traced back to the CO enacted in Hong Kong in 1911, presumably as a transplantation from the UK Companies (Consolidation) Act 1908. The UK provisions were aimed, in part, at allowing joint stock companies formed under the earlier Joint Stock Companies Acts 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. The only incorporated "joint stock companies" that could be in existence in Hong Kong would be companies incorporated under the Companies Ordinances (of 1865, 1911 and 1932) (which are excluded from the scope of sections 310 to 312 under section 310(1)(a)) or joint stock companies incorporated under some other Ordinances in Hong Kong, or Acts of Parliament or letters patent applicable to Hong Kong.
5. We have done research in order to find out if there are still in existence in Hong Kong any limited liability joint stock companies incorporated under an Ordinance (other than the CO or any of its predecessors), an Act of Parliament which has application to Hong Kong, or letters patent. As far as can be ascertained, no such company exists.
6. The position with regard to unincorporated joint stock companies is less certain although the chances of such companies being in existence are rather remote. If there had been any such companies in existence which wished to register under the CO, they would have done so by now.
7. On the basis of the above, and for the sake of simplicity, we consider it justified to have the set of complicated rules on registration of joint stock companies removed from the CB. If, despite the remote possibility, there are still in existence some unincorporated joint stock companies, they could simply dissolve the company and incorporate as a new one if they wish to become a company under the new Ordinance.