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COMPANIES REGISTRY

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## Companies Registry External Circular No. 1 / 2014

### Commencement of the new Companies Ordinance (Cap. 622)

This circular is to announce **the commencement<sup>1</sup> of the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong (“the new CO”), with effect from 3 March 2014.** The 12 pieces of subsidiary legislation which provide for the relevant technical and procedural matters in the new CO will also come into operation on the same day.

2. On commencement of the new CO, the Companies Ordinance (Chapter 32 of the Laws of Hong Kong) (“Cap. 32”) will be retitled “Companies (Winding Up and Miscellaneous Provisions) Ordinance”. All core provisions of Cap. 32 which affect the operation of companies, except those relating to prospectuses, winding up, insolvency of companies and disqualification of directors, will be repealed with effect from 3 March 2014.

### The New Companies Ordinance (Cap. 622)

3. The commencement of the new CO represents a new chapter in corporate regulation in Hong Kong. The main objectives of the new CO are to enhance corporate governance, facilitate business, ensure better regulation and modernise the law with a view to strengthening Hong Kong’s competitiveness as a corporate

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<sup>1</sup> The Companies Ordinance (Commencement) Notice 2013 (L.N. 163 of 2013) gazetted on 25 October 2013 does not include provisions relating to the restricted disclosure of residential addresses of directors and identification numbers of individuals and the scripless regime. Sections 27(3), (4), (5) and (6) insofar as they relate to directors or reserve directors, sections 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59, sections 643(1)(a)(ii), 2(b) and 3(b) insofar as they relate to correspondence address, sections 643(5), 644, 645(5), 647(4) and (5), 651 and 657(2)(g), 791(4), 802(4) and (5), 908, Schedule 2 section 3(1)(a)(iii) and (2), Schedule 6 sections 3 and 4, Schedule 8 and Schedule 11 section 115, will not be brought into operation for the time being.

domicile and enhancing its status as a major international business and financial centre. Highlights of some of the major changes which concern the administration and operation of a company are set out as follows:

**(a) Restricting Corporate Directorship in Private Company**

With a view to enhancing the accountability of directors, every private company is required to have at least one director who is a natural person. A six-month grace period from 3 March 2014, i.e. the commencement of the new CO, will be given for companies registered under Cap. 32 for compliance with the new requirement and delivery of notifications of changes of directors (Form ND2A) to the Registrar of Companies (“the Registrar”) for registration as appropriate.

**(b) Simplifying Company Administration and Procedures**

With a view to facilitating business, the new CO streamlines company administration and procedures by, for example, making the use of corporate seal optional; allowing companies to dispense with Annual General Meetings with unanimous shareholders’ consent; permitting a general meeting to be held at more than one location using electronic technology etc.

**(c) Facilitating Simplified Reporting**

The new CO allows companies that meet specified size criteria to prepare simplified financial statements and directors’ reports. A larger private company that does not meet the specified size criteria will also be entitled to prepare simplified financial statements and directors’ reports if its size does not exceed a higher threshold provided that members of the company holding 75% of the voting rights so resolve and no member objects.

**(d) Abolishing Par Value for Shares**

The new CO adopts a mandatory system of no-par for shares of all companies and retires the concept of par value for all shares. This is in line with international trends to provide companies with more flexibility in structuring their share capital. Deeming provisions are provided in the new CO to ensure a smooth transition for existing companies.

**(e) Abolishing Memorandum of Association**

To modernise the law, the requirement for companies to have a memorandum of association is abolished under the new CO and only articles of association are required. Information currently contained in the memorandum and required under the new CO will have to be included in the

articles. Provisions of the memorandum of companies registered under Cap. 32 will be deemed to be provisions of their articles.

**(f) Ensuring Accuracy of Information on the Companies Register**

The new CO clarifies the powers of the Registrar in relation to the keeping of the Companies Register, such as rectifying typographical or clerical errors and requiring a company to resolve any inconsistency or provide updated information. The new law also introduces a statement of capital to be included in a specified form to be delivered to the Registrar whenever there is a change to the share capital of a company to ensure that the Companies Register contains up-to-date information on a company's share capital.

4. To facilitate ease of reference, a summary of the major initiatives introduced by the new CO is set out at **Annex**.

**New forms**

5. A total of 92 new forms have been specified by the Registrar for the implementation of the new CO. The notices of specification of the forms were published in the Gazette on 1 and 8 November 2013 (G.N. 6495 and G.N. 6633). The forms are either revisions of existing forms or new forms introduced pursuant to the requirements under the new CO. Form numbers of the new forms are denoted by the prefix "N" for easy identification (e.g. Form NAR1). For details of the new forms and the transitional arrangements on the use of forms, please refer to the Companies Registry External Circular No. 2/2013 on "Commencement Date and Introduction of New Forms". The circular is available for collection at the Registry's offices. It may also be downloaded at the "New Companies Ordinance" > "Publications and Press Releases" section of the Registry's website ([www.cr.gov.hk](http://www.cr.gov.hk)).

**New Certificates**

6. New certificates will be issued by the Registrar under the new CO on commencement of the new CO. The certificates are revisions of existing certificates to incorporate references to the relevant provisions of the new CO.

## **Implementation of the new CO**

7. A dedicated thematic section on the new CO has been set up on the Registry's website. The thematic section contains the full text of the new CO and all subsidiary legislation made thereunder. It also contains an overview of the rewrite of Cap. 32, briefing notes, highlights on key changes, frequently asked questions, External Circulars and Guidelines issued by the Registry in relation to the implementation of the new CO.

8. To prepare companies for the implementation of the new CO, the Registry will be sending letters and information pamphlets to all local companies and non-Hong Kong companies registered with the Companies Registry. A series of briefing sessions on the new CO, including forms and new procedures have been, and will continue to be, organised. Particulars of the briefings and seminars are also contained in the thematic section on the new CO at the Registry's website.

9. To receive email notifications of updates to the thematic section, you are advised to register for our free e-News service at the "What's new > Companies Registry News Subscription" section of the Registry's website.

## **Enquiries**

10. For enquiries relating to the new CO, a **dedicated hotline 3142 2822** has been set up. The hotline operates from Monday to Saturday 9:00 a.m. to 8:00 p.m. (excluding public holidays). Email enquiries can be sent to [cr.nco@cr.gov.hk](mailto:cr.nco@cr.gov.hk).

**Ms Ada LL CHUNG**  
**Registrar of Companies**

c.c.: CR HQ/8-1/6

## **The New Companies Ordinance (Cap. 622)**

### **Major Initiatives**

#### **MEASURES FOR ENHANCING CORPORATE GOVERNANCE**

##### **Strengthening the Accountability of Directors**

- Restricting the appointment of corporate directors by requiring every private company to have at least one natural person to act as director, to enhance transparency and accountability.
- Clarifying in the statute the directors' duty of care, skill and diligence with a view to providing clear guidance to directors.

##### **Enhancing Shareholder Engagement in the Decision-Making Process**

- Introducing a comprehensive set of rules for proposing and passing a written resolution.
- Requiring a company to bear the expenses of circulating members' statements relating to the business of, and proposed resolutions for, Annual General Meetings, if they are received in time to be sent with the notice of the meeting.
- Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.

##### **Improving the Disclosure of Company Information**

- Requiring public companies and the larger (i.e., companies that do not qualify for simplified reporting) private companies<sup>1</sup> and guarantee companies<sup>2</sup> to prepare a more comprehensive directors' report which includes an analytical and forward-looking "business review", whilst allowing private companies to opt out by special resolution. The business review will provide useful information for shareholders. In particular, the requirement to include information relating to environmental and employee matters that have a significant effect on the company is in line with international trends to promote corporate social responsibility.

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<sup>1</sup> Under the new Ordinance, a private company is regarded as small if it satisfies any two of the following conditions: (a) total annual revenue of no more than HK\$100 million; (b) total assets of no more than HK\$100 million; and (c) no more than 100 employees.

<sup>2</sup> Under the new Ordinance, a guarantee company is regarded as small if its total annual revenue does not exceed HK\$25 million.

## **Fostering Shareholder Protection**

- Introducing more effective rules to deal with directors' conflicts of interests, including expanding the requirement for seeking shareholders' approval to cover directors' employment contracts which exceed three years.
- Requiring disinterested shareholders' approval in cases where shareholders' approval is required for transactions of public companies and their subsidiaries.
- Requiring the conduct of directors to be ratified by disinterested shareholders' approval to prevent conflicts of interest and possible abuse of power by interested majority shareholders in ratifying the unauthorised conduct of directors.
- Replacing the "headcount test" with a not more than 10% disinterested voting requirement for privatisations and specified schemes of arrangement, while giving the court a new discretion to dispense with the test (in cases where it is retained) for members' schemes.
- Extending the scope of the unfair prejudice remedy to cover "proposed acts and omissions", so that a member may bring an action for unfair prejudice even if the act or omission that would be prejudicial to the interests of members is not yet effected.

## **Strengthening Auditors' Rights**

- Empowering an auditor to require a wider range of persons, including the officers of a company's Hong Kong subsidiary undertakings and any person holding or accountable for the company or its subsidiary undertakings' accounting records, to provide information or explanation reasonably required for the performance of the auditor's duties. The offence for failure to provide the information or explanation is extended to cover officers of the company and the wider range of persons.

## **MEASURES FOR ENSURING BETTER REGULATION**

### **Ensuring the Accuracy of Information on the Public Register**

- Clarifying the powers of the Registrar of Companies (the Registrar) in relation to the registration of documents, such as specifying the requirements for the authentication of documents to be delivered to the Companies Registry (the Registry) and the manner of delivery, and withholding the registration of unsatisfactory documents pending further particulars.
- Clarifying the Registrar's powers in relation to the keeping of the register, such as rectifying typographical or clerical errors, making annotations and requiring a company to resolve any inconsistency or provide updated information.

- Providing a statutory basis for applications to court for removing information from the register that is inaccurate, forged or derived from anything invalid, ineffective or done without the authority of the company.
- Requiring a company to deliver to the Registry a return, including a statement of capital, whenever there is a change to its capital structure, to ensure that the public register contains up-to-date information on a company's share capital structure.
- Requiring all guarantee companies to file annual returns with financial statements and introducing an escalating scale of annual registration fees for annual returns of guarantee companies to encourage timely compliance of statutory filing requirement.

### **Improving the Registration of Charges**

- Revising the list of registrable charges, such as expressly providing that a charge on an aircraft or any share in an aircraft is registrable, and removing the requirement to register a charge for the purpose of securing an issue of debentures.
- Replacing the automatic acceleration of the repayment obligation with a choice given to the lender as to whether the secured amount is to become immediately payable when a charge is void due to non-compliance with the registration requirements.
- Requiring a certified copy of the charge instrument (in addition to the prescribed particulars of the charge) to be registered and available for public inspection, to provide more detailed information to those who search the register.
- Shortening the period for delivery to the Registrar of the charge instrument and the prescribed particulars from five weeks to one month, to reduce the period during which the charge is not visible on the register.
- Requiring written evidence of satisfaction/release of a charge to accompany a notification to the Registrar for registration of the satisfaction/release, thus making such documents available for public inspection.

### **Refining the Scheme for Deregistration of Companies**

- Imposing three additional conditions for the deregistration of defunct companies, namely that the applicant must confirm that the company is not a party to any legal proceedings and that neither the company nor its subsidiary has any immovable property in Hong Kong, to minimise any potential abuse of the deregistration procedure.

## **Improving the Enforcement Regime**

- Enhancing the investigatory powers of an inspector, for example, by requiring a person under investigation to preserve records or documents and to verify statements made by statutory declaration.
- Providing better safeguards to ensure the confidentiality of information obtained in investigations and enquiries and for the better protection of informers.
- Providing new powers for the Registrar to obtain documents or information to ascertain whether any conduct that would constitute an offence in relation to the provision of false or misleading statement to the Registrar has taken place.
- Strengthening the enforcement regime in relation to the liabilities of officers of companies for the companies' contravention of provisions in the new Ordinance, including lowering the threshold for prosecuting a breach or contravention and extending it to cover reckless acts through a new definition of "responsible person".
- Introducing a new offence in relation to inaccurate auditor's reports. The offence would be committed if the auditors in question knowingly or recklessly caused two important statements to be omitted from the auditor's report.
- Empowering the Registrar to compound specified offences to optimise the use of judicial resources. Compoundable offences are generally confined to straightforward, minor regulatory offences committed by companies that are punishable by a fine.

## **MEASURES FOR FACILITATING BUSINESS**

### **Streamlining Procedures**

- Allowing companies to dispense with Annual General Meetings by unanimous shareholders' consent.
- Introducing an alternative court-free procedure for reducing capital based on a solvency test.
- Allowing all types of companies (rather than just private companies, as in the current Companies Ordinance (Cap.32)) to purchase their own shares out of capital, subject to a solvency test.
- Allowing all types of companies (whether listed or unlisted) to provide financial assistance to another party for the purpose of acquiring the company's own shares or the shares of its holding company, subject to a solvency test. Under the current



Companies Ordinance, subject to certain specified exceptions, there is a broad prohibition on the giving of financial assistance to purchase the company's own shares.

- Introducing a new court-free statutory amalgamation procedure for wholly owned intra-group companies.
- Streamlining the procedures for the restoration of dissolved companies by court order.
- Introducing a new administrative restoration procedure for a company dissolved by the Registrar in straightforward cases, without the need for recourse to the court.

### **Facilitating Simplified Reporting**

- Facilitating SMEs to prepare simplified financial and directors' reports along the following lines:
  - a private company (with the exception of a bank/deposit-taking company, an insurance company or a stockbroker) will automatically qualify for simplified reporting if it qualifies as a "small private company".
  - the holding company of a group of companies that qualifies as a "group of small private companies" will also qualify for simplified reporting.
  - a private company that is not a member of a corporate group may adopt simplified reporting with the agreement of all the members.
- Allowing small guarantee companies and groups of small guarantee companies, which have a total annual revenue of not more than \$25 million, to qualify for simplified reporting.
- A private company or a group of private companies which is not qualified as a "small private company" or a "group of small private companies" respectively may prepare simplified reports if it meets a higher size criteria and if the members holding 75% of the voting rights so resolve and no member objects.
- Making the summary financial reporting provisions more user-friendly and extending their application to companies in general (rather than confining them to listed companies, as in the current Companies Ordinance).

### **Facilitating Business Operations**

- Making the use of a common seal optional and relaxing the requirements for a company to have an official seal for use abroad.

- Permitting a general meeting to be held at more than one location using electronic technology.
- Setting out the rules governing communications to and by companies in electronic form.

## **MEASURES FOR MODERNISING THE LAW**

### **Rewriting the Law in Simple and Plain Language**

- Modernising the language and re-arranging the sequence of some of the provisions in a more logical and user-friendly order so as to make the new CO more readable and comprehensible.

### **Abolishing Par Value for Shares**

- Adopting a mandatory system of no-par for all companies with a share capital as par value is an antiquated concept that may give rise to practical problems, such as inhibiting the raising of new capital and unnecessarily complicating the accounting regime.

### **Abolishing Memorandum of Association**

- Abolishing the requirement for companies to have a memorandum of association and only articles of association are required. Conditions contained in the memorandum of existing companies will be deemed to be provisions of their articles, except those relating to authorized share capital and par value, which are regarded as deleted under the new CO.

### **Removing the Power to Issue Share Warrants**

- Removing the power of companies to issue share warrants to bearers. Share warrants are rarely issued by companies nowadays and are undesirable from the perspective of anti-money laundering because of the lack of transparency in the recording of their ownership and the manner by which they are transferred.

### **Clarifying the Rules on Indemnification of Directors against Liabilities to Third Parties**

- Clarifying the rules on the indemnification of directors against liabilities to third parties in order to remove the uncertainties at common law.