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## Companies Registry External Circular No. 12 / 2014

### The New Companies Ordinance (Cap. 622) - Compounding of Specified Offences

This circular provides information on the new power of the Registrar of Companies (“the Registrar”) under the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong (“the new CO”) to give notice to companies or their officers who are in breach of specified offences about not instituting prosecution proceedings under certain conditions. This new power is known as “compounding”.

#### Background

2. Over the years, the Registrar has implemented a range of administrative measures including publication of external circulars and information pamphlets to provide general guidelines on compliance to encourage due compliance with statutory obligations, in particular, filing obligations, in addition to prosecution for non-compliance. To further expand the repertoire of measures to encourage compliance and to optimise the use of judicial resources, the new CO empowers the Registrar to compound, at the discretion of the Registrar, specified offences as set out in Schedule 7 to the new CO.

#### Overview

3. In compounding an offence, the Registrar will give notice to a person<sup>1</sup> who is in breach of the specified offences offering the person an opportunity to rectify the default by remedying the breach constituting the offence within a specified period **and** paying a specified amount to the Registrar as a compounding fee. If the person accepts the offer and complies with the terms of the notice, no prosecution action will be initiated for that offence. If there is non-compliance, either by failure to pay the compounding fee or failure to do the act that is required to be done, the Registrar may proceed to institute prosecution action.

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<sup>1</sup> “Person” includes corporate, that is the company which is in breach.

## Details

4. Section 899 of the new CO gives the Registrar a new power to compound specified offences as set out in Schedule 7 to the new CO.

5. Section 899(1) provides that if the Registrar has reason to believe that a person has committed an offence specified in Schedule 7, the Registrar may give the person a notice in writing which:

- (a) states that the person has committed an offence specified in the Schedule and sets out the particulars of the offence;
- (b) sets out, among other things, the conditions upon which no proceedings will be instituted against the person in respect of the offence, including:
  - (i) the amount of the compounding fee to be paid;
  - (ii) the period within which the conditions have to be complied with; and
  - (iii) where the offence is constituted by a failure to do an act or thing, the specified period within which the act or thing must be done.

6. If the person pays the compounding fee and complies with the terms of the notice, then no prosecution action will be taken by the Registrar against the person in respect of the offence.

7. Section 899(2) provides that the notice may only be given before prosecution proceedings are commenced.

8. Section 899(3) provides that the Registrar may, by a further notice in writing, extend the period specified in the original notice and that this power may be exercisable within or after the end of that original period.

9. Section 899(4) provides that the notice may not be withdrawn during the period specified in the notice or the extended period.

10. Section 899(7) makes it clear that the payment of the compounding fee is not to be regarded as an admission by the person of any liability for the offence stated in the notice.

11. Schedule 7 to the new CO sets out the specified offences for which the option to compound is available. The offences are set out at Annex.

## **Compounding Fee and Confirmation of Acceptance**

12. The compounding fee will be HK\$600 for each specified offence.

13. If the person who has been given a notice under section 899(1) accepts the offer specified in the notice, the person has to sign a confirmation of acceptance (Form NCO1) which is attached to the notice. The Form NCO1 should be delivered to the Registrar together with the compounding fee and any outstanding documents and fees as required within the period specified in the notice by post or in person to the Companies Registry, or by electronic means through the e-Registry ([www.eregistry.gov.hk](http://www.eregistry.gov.hk)). If the Form NCO1 and the outstanding documents and fees are delivered but the Registrar has not received them, or if they are not delivered with the correct fees, or if the Form and the documents are not properly signed, the Form NCO1 and the outstanding documents will not be regarded as having been delivered to the Registrar.

## **Enquiries**

14. Enquiries concerning this circular should be directed to Miss Karen CHAN, Assistant Registry Manager (Prosecution), at (852) 2867 3407/ karenchan@cr.gov.hk.

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

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

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

**Specified offences for which the discretion to compound applies**

- (a) An offence under section 74(2) relating to the delivery to the Registrar of Companies of directors' written consents to act;
- (b) An offence under section 124(3) relating to the form of a common seal;
- (c) An offence under section 124(4) relating to improper use of the common seal;
- (d) An offence under section 662(6) relating to the delivery of an annual return by a local company;
- (e) An offence under section 788(3) relating to the delivery of an annual return by a registered non-Hong Kong company;
- (f) An offence under section 789(3) relating to the delivery of accounts by a registered non-Hong Kong company;
- (g) An offence under section 792(6) in respect of section 792(1) or (2) relating to the display of company name, place of incorporation, etc. by a non-Hong Kong company;
- (h) Any of the offences under section 7(1) of the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) relating to the display of company name and liability status by a local company;
- (i) Any of the offences under section 7(2) of the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) relating to specified breaches of the Regulation by a person other than a responsible person of a local company.