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Companies Registry External Circular No. 3 / 2013

Holding of Annual General Meeting and Laying of Accounts at Annual General Meeting

This circular is to remind companies and their officers of the statutory requirements under sections 111 and 122 of the Companies Ordinance, Cap. 32 (“CO”), for every company to hold annual general meetings (“AGMs”) and for directors to lay accounts before the company at AGMs.

Holding of AGMs

2. Under section 111(1) of the CO, every company shall in each year hold a general meeting as its annual general meeting and not more than 15 months, or such longer period as the Registrar of Companies may in any particular case authorize in writing, shall elapse between the date of one annual general meeting of the company and the next.

3. Authorization to extend the time for holding AGMs will not be given by the Registrar of Companies retrospectively.

Laying of Accounts at AGMs

4. Under section 122 of the CO, the directors of every company shall lay before the company at its annual general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account.

5. The directors of a company shall also cause to be made out in every calendar year, and to be laid before the company at its AGM, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up [section 122(2)].

6. The accounts laid before AGMs shall be made up to a date falling not more than 6 months, or, in the case of a private company (other than a private company which is a member of a group of companies of which a non-private company is a member) and a company limited by guarantee not more than 9 months, before the date of the meeting [section 122(1A)].

Application to Court

7. Section 111(2) provides that if default is made in holding a meeting of the company in accordance with section 111(1), the court may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the court thinks expedient.

8. Section 122(1B) also provides that the court, if for any reason it thinks fit so to do, may in the case of any company and with respect to any year substitute for the requirement to lay accounts before the company at its AGM a requirement to lay such accounts before the company at such other general meeting of the company as the court may specify. The court may also extend the periods of 6 and 9 months referred to in paragraph 6 above.

9. However, companies and their officers should note that applications to the court under sections 111(2) and 122(1B) should not be assumed to be a formality. The granting of the relevant orders is at the court's discretion. Applications may be dismissed if the court is not satisfied with the grounds for the applications.

Consequence of Non-compliance

10. If default is made in holding AGMs in accordance with section 111(1), the company and every officer of the company who is in default shall be liable to prosecution and, if convicted, to a fine of up to HK\$50,000.

11. If a director of a company fails to take all reasonable steps to comply with the provisions to lay accounts before the company at its AGMs under section 122, the director shall be liable to prosecution and, if convicted, to imprisonment for up to 12 months and a fine of up to HK\$300,000.

Enquiries

12. Enquiries concerning this circular should be directed to Miss Angelina MOK, Assistant Registry Manager (Registration) 1, at (852) 2867 4562 or angelinamok@cr.gov.hk.

13. This circular is intended to provide general information to companies on compliance with the provisions of the CO in relation to the holding of AGMs and laying of accounts at AGM. You are advised to seek independent legal advice if and when necessary.

Ms Ada LL CHUNG
Registrar of Companies

c.c.: CR HQ/9-200/1