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## **Companies Registry External Circular No. 5 / 2014**

### **The New Companies Ordinance (Cap. 622) - Subsidiary Legislation**

This circular seeks to provide information on the subsidiary legislation made under the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong (“the new CO”).

#### **List of Subsidiary Legislation**

2. The 12 pieces of subsidiary legislation, which provide for the relevant technical and procedural matters for the implementation of the new CO, are as follows:

- Companies (Words and Expressions in Company Names) Order (Cap. 622A)
- Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B)
- Companies (Accounting Standards (Prescribed Body)) Regulation (Cap. 622C)
- Companies (Directors’ Report) Regulation (Cap. 622D)
- Companies (Summary Financial Reports) Regulation (Cap. 622E)
- Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622F)
- Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap. 622G)
- Companies (Model Articles) Notice (Cap. 622H)
- Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I)
- Companies (Non-Hong Kong Companies) Regulation (Cap. 622J)
- Companies (Fees) Regulation (Cap. 622K)
- Companies (Unfair Prejudice Petitions) Proceedings Rules (Cap. 622L)

## Overview

3. A brief description of the 12 pieces of subsidiary legislation is set out at **Annex. All the subsidiary legislation will come into operation together with the new CO on 3 March 2014.**

## Enquiries

4. For enquiries relating to the new CO and the subsidiary legislation, 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).

5. This External Circular may be read together with the Companies Registry External Circular No. 1/2014 on “Commencement of the new Companies Ordinance (Cap. 622)”.

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

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

## **A Brief Description of Subsidiary Legislation made under the new Companies Ordinance**

### **(I) Companies (Words and Expressions in Company Names) Order (Cap. 622A)**

Section 100(2)(b) of the new CO retains an existing arrangement under which approval has to be sought from the Registrar of Companies should a company wish to register a name containing certain words or expressions as specified in the subsidiary legislation. This Order sets out the updated list of words and expressions. It basically follows the existing list in the Companies (Specification of Names) Order (Cap. 32E) (which will be repealed on commencement of the new CO) but with the addition of the words “levy” and “tourism board” to guard against the registration of a company name which gives people the impression that the company in question is responsible for the collection of levies or is connected in some way with the Hong Kong Tourism Board. In updating the list, several words and expressions in Cap. 32E have not been retained as they are either duplicative or no longer required.

### **(II) Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B)**

Sections 93 and 94 of the existing CO stipulate the requirements concerning the display and disclosure of a company’s registered name at the company’s offices. This Regulation, while re-enacting the majority of existing requirements, introduces the following changes –

- (a) the requirement for the company to paint or affix its name outside of its office is replaced by the requirement for the name to be displayed at the office and so positioned that it can be easily seen by any visitor to the office;
- (b) taking into account the usual practices of company service providers and liquidators, this Regulation provides for certain circumstances under which the requirement to display the name of the company concerned may be dispensed with;
- (c) considering that a location may serve as the registered offices of multiple companies, provisions are also added to accommodate the use of electronic devices for the display of company names at a location shared by more than six companies; and
- (d) the obligation to state the company’s registered name (and the liability status where applicable) in all communication documents and transaction instruments of the company is re-enacted and extended to cover company websites.

**(III) Companies (Accounting Standards (Prescribed Body)) Regulation (Cap. 622C)**

Sections 380(4)(b) and 380(8)(a) of the new CO stipulate that the financial statements of a company must comply with the applicable statements of standard accounting practice issued or specified by a body prescribed by subsidiary legislation. The Regulation specifies the Hong Kong Institute of Certified Public Accountants as such a body.

**(IV) Companies (Directors' Report) Regulation (Cap. 622D)**

As in the existing CO, the new CO will continue to require the preparation of a directors' report for laying before a company in its general meeting. The Companies (Directors' Report) Regulation re-enacts certain requirements concerning the contents of a directors' report (which are currently prescribed in section 129D(3) of the existing CO) with modifications to align with the provisions and definitions in the new CO. To enhance corporate governance and transparency, the scope of disclosure is expanded to require the inclusion of –

- (a) information on equity-linked agreements entered into by a company; and
- (b) a summary of reasons for resignation or refusal to stand for re-election given by a director if such reasons are (i) given in a written notice and (ii) related to the affairs of the company. This requirement does not apply to companies that prepare simplified reports.

As regards the disclosure of contracts of significance to the business of the company and in which a director (and his/her connected entity in the case of public company) has material interest, the scope of application has been expanded to cover transactions and arrangements in line with Part 11 of the new CO.

**(V) Companies (Summary Financial Reports) Regulation (Cap. 622E)**

The new CO expands and modifies the existing arrangement for eligible companies to prepare financial reports in summary form. This Regulation sets out the requirements on the forms and contents of a summary financial report as well as the relevant notifications. It basically follows the existing Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32M), which will be repealed on commencement of the new CO. Necessary modifications are made to reflect the new arrangements in relation to summary financial reports contained in sections 437 to 446 of the new CO.

**(VI) Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622F)**

Under the existing CO, section 141E provides that the directors of a company may voluntarily revise its accounts (and make necessary consequential

revisions to the summary financial report and the directors' report) after the accounts have been provided to its members. The detailed requirements concerning the revised documents, the manner in which the provisions in the existing CO apply to the revised documents and the relevant offences as prescribed in the existing Companies (Revision of Accounts and Reports) Regulation (Cap. 32N) follow the general principle that the obligations and arrangements concerning the original documents also apply to the revised documents. Section 449 of the new CO which allows for the voluntary revision of financial statements is premised on the same basis. This Regulation basically re-enacts Cap. 32N (which will be repealed on commencement of the new CO), with modifications made to align with the applicable provisions on Accounts and Audit in Part 9 of the new CO.

**(VII) Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap. 622G)**

Sections 161 and 161B of the existing CO require the disclosure of information in the company's accounts as regards payments relating to a director's services (namely emoluments, pensions and compensation for termination) and dealings in favour of directors (namely loans, quasi-loans and credit transactions as well as guarantees entered into and security provided in relation to such dealings). This Regulation restates and consolidates the detailed disclosure requirements. Some refinements have been made in the Regulation and examples include –

- (a) the scope of emoluments is clarified to include bonuses and the sums paid to a person for accepting office as a director;
- (b) the disclosure requirements applicable to non-cash benefits are expanded to require an indication of the nature of such benefits;
- (c) the references to "pensions" are replaced by references to "retirement benefits" to more adequately reflect the intention of the disclosure regime; and
- (d) section 383(1)(f) of the new CO introduces a new requirement for the disclosure of information on the consideration provided to any third party for making available a director's services. This Regulation prescribes the detailed requirements in this respect.

**(VIII) Companies (Model Articles) Notice (Cap. 622H)**

This Notice prescribes three sets of model articles for (i) public companies limited by shares; (ii) private companies limited by shares; and (iii) companies limited by guarantee respectively. As compared to the standard articles provided under the existing CO, the improvements include –

- (a) in respect of decision-making by directors, the model articles contain additional clauses to provide for the procedures for written resolutions and the appointment and removal of alternate director;

- (b) in respect of the proceedings of general meetings, an article is added to expressly state the rights of directors and non-members to attend and speak at general meetings whereas the articles relating to the effect, validity and the delivery of relevant notices for proxies are elaborated; and
- (c) for matters relating to share capital, the rules relating to forfeiture of partly-paid shares are set out in greater detail and an article is added to deal with surrender of shares in lieu of enforcement of a call for payment. Amendments are also made to reflect the greater flexibility resulting from migration to no-par shares in the new CO.

Apart from the above, efforts are also made to enhance the readability and user-friendliness of the model articles by re-organising the articles, presenting them in shorter paragraphs where practicable and adding headings for each article.

### **(IX) Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I)**

Under the new CO, certain company records (such as registers and minutes of general meetings) may be kept at a place prescribed by the Company Records (Inspection and Provision of Copies) Regulation other than its registered office and be subject to inspection in accordance with the Regulation. The Regulation provides that in such cases, the records concerned may be kept anywhere in Hong Kong. The records must also be made available for inspection by those eligible to make the inspection, whereas the person inspecting the records may make copies of the records concerned.

For certain types of records (including, for example, registers of members and minutes of general meetings), the new CO also provides that an eligible person may request for copies of the records in accordance with this Regulation. The requests must be entertained within 10 business days. The charge for the copies cannot exceed an amount calculated according to the number of entries (in the case of a register) or otherwise the number of pages as prescribed in the Regulation.

### **(X) Companies (Non-Hong Kong Companies) Regulation (Cap. 622J)**

Non-Hong Kong companies (i.e. companies incorporated in a place outside Hong Kong that have established a place of business in Hong Kong) are currently subject to Part XI of the existing CO. Under the new CO, Part 16 deals with matters relating to non-Hong Kong companies whereas the procedures and the detailed requirements including the documents to be delivered upon the registration of non-Hong Kong companies, the furnishing of supporting documents or certified translation and the delivery of annual returns are prescribed by subsidiary legislation. This Regulation basically restates the existing requirements and arrangements in respect of these matters.

**(XI) Companies (Fees) Regulation (Cap. 622K)**

This Regulation sets out the fees payable to the Companies Registry for its various functions or services and restates the existing fees set out in the Eighth Schedule to the existing CO. The existing CO provides for an escalating scale to the annual registration fee for late filing of annual returns by companies limited by shares since 1988. This arrangement is extended to companies limited by guarantee, which are currently subject to a fixed annual registration fee, so as to encourage compliance with the statutory filing requirement in the light of increasing public expectation of corporate transparency. The escalating scale for companies limited by guarantee is the same as the existing scale applicable to private companies limited by shares.

**(XII) Companies (Unfair Prejudice Petitions) Proceedings Rules (Cap. 622L)**

Sections 723 to 727 of the new CO restate and expand the arrangement under the existing CO for members of a company to petition to the Court of First Instance for relief if the company's affairs are being or have been conducted in a manner unfairly prejudicial to any member of the company. While presently the Companies (Winding-up) Rules (Cap. 32H) regulate the conduct of such proceedings, Cap. 32H is enacted primarily for winding up proceedings. Instead of relying on Cap. 32H, the conduct of applications relating to claims of unfair prejudice under the new CO regime are regulated by the Companies (Unfair Prejudice Petitions) Proceedings Rules. The Rules are made by the Chief Justice and set out the procedural requirements regarding the form of the petition, the service of the petition, the drawing up and the service of an order as well as other procedural matters.