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7 December 2012

COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 7/ 2012

The new Companies Ordinance (No. 28 of 2012) Abolition of nominal value of shares

This circular provides information on the abolition of nominal value of shares, one of the major changes that will be implemented upon commencement of the new Companies Ordinance (“the new CO”).

Effective Date of Change

2. It is expected that the new CO will come into operation in 2014 after enactment of all subsidiary legislation. **The abolition of nominal value for the shares of all Hong Kong companies will take effect immediately upon commencement of the new CO. The new regime applies to all local companies regardless of whether the companies are formed before or after the commencement date of the new CO.**

3. Section 135 of the new CO provides that shares in a company have no nominal value. The section applies to shares issued before the commencement date of the section as well as shares issued on or after that date.

Background

4. Nominal value of shares (also known as “par value”) is the minimum price at which shares can generally be issued. The new CO adopts a mandatory system of no-par for all local companies having a share capital and retires the concept of par value for all shares. This is in line with international trends to provide companies with greater flexibility in structuring their share capital.

5. It is generally accepted that par value does not serve its original purpose of protecting creditors and shareholders, and in fact may even be misleading because the par value does not necessarily give any indication of the real value of the shares.

6. In other comparable common law jurisdictions, there is also growing acceptance of no-par value shares. It is considered that retiring the concept of par value creates an environment with greater clarity and simplicity and is more desirable for the business community generally. Jurisdictions that have adopted mandatory no-par value shares include Australia, New Zealand and Singapore.

Major Changes

7. Under the current Companies Ordinance, Cap. 32 (“Cap. 32”), companies incorporated in Hong Kong and having a share capital are required to have a par value ascribed to their shares. This represents the minimum amount at which a share can be issued.

8. Companies must also declare in their Memorandum of Association the maximum amount of share capital that may be issued by the company (the requirement for “authorized share capital”).

9. The amount of the excess of the issue price of the share over its par value is designated as “share premium”. Under Cap. 32, there are restrictions on how a company can deal with share premium and how it must be accounted for.

10. Under the new CO, as a result of migration to mandatory no-par, relevant concepts such as par value, share premium, and requirement for authorized share capital are no longer necessary and are abolished.

11. A company will have greater flexibility to alter its share capital in a no-par environment, for example, a company will be able to capitalize its profits without issuing new shares and to allot and issue bonus shares without increasing its share capital (section 170 of the new CO).

Transitional Arrangements for Existing Companies

Memorandum of Association

12. Upon commencement of the new CO, the provisions in the Memorandum of Association of an existing company (which would be deemed to be provisions in the Articles of Association after commencement of the new CO) relating to authorized share capital and par value of the shares are for all purposes to be regarded as deleted (section 98(4) of the new CO). **The share capital of a company will be its issued share capital.**

Share Premium Account

13. With the abolition of par value, “share premium” will no longer exist. There is a deeming provision in the new CO to provide for the amalgamation of the existing share capital amount with the amount in the company's share premium account (section 37 of Schedule 11 to the new CO). The currently permitted uses of share premium existing at the date of commencement of the new CO will be preserved, for example, to pay up shares which are issued as bonus shares (section 38 of Schedule 11 to the new CO).

Capital Redemption Reserve

14. On the commencement date of the new CO, any amount standing to the credit of the company's capital redemption reserve becomes part of the company's share capital (section 37 of Schedule 11 to the new CO).

Contracts entered into by companies having references to the par value

15. There are transitional and deeming provisions in Schedule 11 (sections 35 to 41) to the new CO relating to the move from par value shares to no-par value shares. The provisions are intended to provide legislative safeguards to ensure that contractual rights defined by reference to par value and related concepts will not be affected by the abolition of par.

Action to be Taken by Existing Companies

16. Despite the comprehensive transitional provisions for existing companies, individual companies may wish to review their particular situation before commencement of the new CO to determine whether or not they need to introduce more specific changes to their documents as a result of the migration to the no par regime. For example, companies may review their constitutional documents, contracts entered into by the company, trust deeds involving the company and share certificates issued by the company to see if they require to make any specific changes. Companies are advised to seek independent legal advice as they see fit.

Enquiries

17. Further details relating to the abolition of nominal value of shares under the new CO are available in the “New Companies Ordinance” section of the Companies Registry's website (www.cr.gov.hk). Enquiries concerning this circular may be directed to Mr YU Kwok-kuen, Assistant Registry Manager (Registration) 2, at (852) 2867 5365 / kkyu@cr.gov.hk.

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