

The new Companies Ordinance : Major Changes in Filing Requirements

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“Unsatisfactory Document” (1)

Definition – s.31

Define under what circumstances a document delivered to the Registrar is considered unsatisfactory

“Unsatisfactory Document” (2)

Some examples

- ❑ the document is not accompanied by the fee payable for the registration
- ❑ the document or any signature on the document
 - (i) is incomplete or incorrect; or
 - (ii) is altered without proper authority
- ❑ the information contained in the document—
 - (i) is internally inconsistent; or
 - (ii) is inconsistent with other information on the Companies Register or other information contained in another document delivered to the Registrar

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“Unsatisfactory Document” (3)

Power to refuse to accept or register - s.35

If the Registrar is of the opinion that a document delivered for registration under an Ordinance is unsatisfactory, the Registrar may refuse to accept the document; or refuse to register the document and return the document to the person who delivered it for registration.

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Concept of “Delivery” of documents

s. 35(5)

If the Registrar **has not received** a document, the document is to be regarded as **not having been delivered** to the Registrar in satisfaction of the provision of the Ordinance that requires or authorizes the document to be delivered to the Registrar.

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Filing of Amended Documents

s.41(2)

expressly gives the Registrar of Companies **powers to rectify a typographical or clerical error** contained in any information relating to a company on the Companies Register **on an application by the company**

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Time limit for filing

The delivery periods of 14 days under the provisions of the existing CO are changed to **15 days** across-the-board under the new CO to minimise confusion to companies.

Examples: Delivery of Form ND2A, Form ND2B, Form NR1 etc.

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Mandatory No Par Regime (1)

s.135

- ❑ Shares in a company have **no nominal value**.
- ❑ The new regime **applies to all local companies** with a share capital.
- ❑ Requirements to report authorised share capital or its increase are removed.

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Mandatory No Par Regime (2)

- All shares issued before the commencement of the new CO are deemed to have no par value.
- Amounts standing to the credit of a company's share premium account and capital redemption reserve become part of the company's share capital.

(s.37 of Schedule 11)

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Statement of Capital (1)

s.201

A statement of capital is required to be included in a return or notice delivered to the Registrar for registration under Parts 4 and 5 (relating to share capital)

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Statement of Capital (2)

The statement is included in a form relating to share capital in the following manner:

Part A

6 股本說明 (以股份配發的日期的狀況為準)
Statement of Capital (As at the Date of the Allotment of Shares)

A. 股本 Share Capital (如空間不足, 請用續頁 C 申報 Use Continuation Sheet C if the space is insufficient)

股份的類別 (如普通股/ 優先股等) Class of Shares (e.g. Ordinary/ Preference etc.)	貨幣單位 Currency	已發行股份 Issued Shares			
		總數 Total Number	總款額 Total Amount (a)	已繳或視作 已繳的總款額 Amount Paid up or Regarded as Paid up (b)	未繳或視作 未繳的總款額 Amount Unpaid or Regarded as Unpaid (a) - (b)

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Statement of Capital (3)

Part B

8 B. 股份所附帶的權利的詳情 Particulars of Rights Attached to Shares

只適用於發行超過一類股份的公司 Only applicable to company issuing more than 1 class of shares

(如空間不足, 請用續頁 D 申報 Use Continuation Sheet D if the space is insufficient)

股份的類別 (如普通股/ 優先股等) Class of Shares (e.g. Ordinary/ Preference etc.)	附帶的權利的詳情 (包括表決權; 在分派股息時參與該項分派的權利; 在分派股本時參與該項分派的權利; 該類別股份是否屬可贖回股份) Particulars of Rights Attached (Including voting rights; rights to participate in a distribution as respects dividends; rights to participate in a distribution as respects capital; whether the shares are redeemable)

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Directors

s.457

- Every **private** company must have **at least one director who is a natural person.**
- **A grace period of 6 months** after the commencement date of the new CO is provided **for existing companies** to comply with the new requirement.

(s.89 of Schedule 11)

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Company Secretary (1)

s.650

- **Company secretary** who is a **natural person** is only required **to report correspondence address** instead of residential address

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Company Secretary (2)

- For **existing companies**, the address of the company's registered office is to be regarded as the **correspondence address of the company secretary** who is a natural person on and after the commencement date of the new CO. (s.118(5) of Schedule 11)
- The above provision does **NOT** give rise to any **duty to deliver a Form ND2B** for the change of particulars of company secretary under s.652. (s.118(6) of Schedule 11)

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Company Secretary (3)

- Existing companies are required **to report via Form ND2B** if :
 - the **registered office address of the company** is not to be used as the **correspondence address of a company secretary** who is a natural person
 - there are subsequent **changes in the correspondence address** of the company secretary

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Registration of charges / release (1)

Registrable Charges - s.334

- Clarifies that if a company maintains a deposit of money with another person, a charge on the company's right to repayment is not to be regarded as a charge on book debts of the company
- A charge on deposits is therefore not registrable as a charge on book debts. (section 334(3)(b))

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Registration of charges / release (2)

Requirements for Registration of Charges

- ss. 335, 336, 338, 339 & 340

- A certified true copy of the charge instrument is required to be delivered for registration with the new specified form (Form NM1).
- Form NM1 and the certified copy of instrument will be registered and available for search.
- The certified copy of instrument will not be returned to presenter after registration.

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Registration of charges / release (3)

Time for Registration of Charges
- ss. 335, 336 and 338 to 340

- Shortened from within 5 weeks
to one month

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Registration of charges / release (4)

Requirements for Registration of Release - s.345

- A certified true copy of evidence of discharge is required to be delivered for registration with the new specified form (Form NM2).
- Form NM2 and the certified copy of evidence will be registered and available for search.
- The certified copy of evidence of discharge will not be returned to presenter after registration.

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Annual Returns – Private Companies

- ❑ **No changes** in the requirement to deliver
- ❑ Date of return : anniversary of the date of a company's incorporation
- ❑ Time for delivery : within 42 days after the date of return
- ❑ Only difference : **No more Form AR3** – Certificate of no change

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Annual Returns – Public Companies (1)

- ❑ Annual Return (AR) should be delivered in respect of **each financial year** instead of a calendar year.
- ❑ AR is to be delivered within **42 days after the company's return date**, i.e. **6 months** after the end of the company's accounting reference period.

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Annual Returns – Public Companies (2)

Note:

For an existing public company, the new requirements only apply to the **first financial year of the company that begins on or after the commencement date of the new CO** and all subsequent financial years.

(s.121(1)(b) of Schedule 11)

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Annual Returns – Public Companies (3)

- ❑ AR has to be delivered together with certified true copies of relevant financial statements, directors' report and auditors' report
- ❑ Late delivery of AR is subject to **higher registration fee**

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Annual Returns – Guarantee Companies (1)

- ❑ AR should be delivered in respect of **each financial year** instead of a calendar year.
- ❑ AR is to be delivered within **42 days after the company's return date**, i.e. **9 months** after the end of the company's accounting reference period.

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Annual Returns – Guarantee Companies (2)

Note:

For an existing guarantee company, the new requirements apply to the **first financial year of the company that begins on or after the commencement date of the new CO** and all subsequent financial years.

(s.121(1)(b) of Schedule 11 to the new CO)

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Annual Returns – Guarantee Companies (3)

- ❑ AR has to be delivered together with certified true copies of relevant financial statements, directors' report and auditors' report
- ❑ Late delivery of AR is subject to **higher registration fee**

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The End

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