



New Companies Ordinance (Cap. 622)

The new Companies Ordinance (Cap. 622) and its subsidiary legislations becomes operative on 3 March 2014, except for the provisions relating to the restricted disclosure of residential addresses of directors and full identification numbers of individuals and the scripless regime.

The new Companies Ordinance is a watershed in the development of corporate and commercial law in Hong Kong. It introduces a principle that a company should be concerned with its social responsibility (including compliance with laws; environmental protection; and the company's relationship with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends).

The new Companies Ordinance is divided into 21 parts consisting of 921 sections and 11 Schedules.

I Company Formation

1 Abolition of memorandum of association

Current provisions in a company's memorandum of association are regarded as part of the company's articles of association.

2 Abolition of par value and authorised nominal value of the shares

The capital clause in the memorandum of association is abolished. Instead, a mandatory system of no-par value for shares of all local companies is adopted. Concepts such as nominal value, share premium, and requirement for authorised capital are abolished.

3 *Mandatory articles*

The articles of association incorporated under the new Companies Ordinance must contain:

- (1) company name;
- (2) members' liabilities;
- (3) liabilities or contribution of members (for companies limited by shares and companies limited by guarantee);
- (4) capital and initial shareholdings (for companies with a share capital); and
- (5) company's objects (for an association to be incorporated as a limited company with a licence to dispense with the word "Limited" or a limited company granted with such a licence).

4 *Common seal is optional*

II Share Capital

5 *Transfer of shares*

A company must, within 2 months after transfer of shares is lodged, either register the transfer or send notice of refusal to register the transfer. If company gives notice of refusal to register the transfer, transferor or transferee may request statement of the reasons for refusal and the company must, within 28 days of receiving the request, send a statement of the reasons or register the transfer.

6 *Reduction of share capital*

Court sanction is no longer required. Reduction of share capital can be effected by special resolution supported by solvency statement signed by all directors with a notice published in the HKSAR Government Gazette.

III Financial Statements, Directors' Report and Auditor's Report

For each financial year, directors of a company must prepare (1) financial statements, and (2) directors' report, and the auditor of the company must prepare a report on the financial statements prepared by the directors.

7 *Financial statements*

Financial statements must give a true and fair view of the financial position and financial performance of the company, and to comply with accounting standards recognised under the new Companies Ordinance.

8 *Directors' report*

Directors' report must include the particulars of directors, the nature and extent of the interest which the director or shadow director is interested in all contracts, and a business review of the company.

9 *Auditor's report*

Auditor's report must include the auditor's opinion on whether:-

- (1) the financial statements prepared by the directors have been properly prepared in compliance with the new Companies Ordinance;
- (2) the financial statements give a true and fair view of the financial position and financial performance of the company;
- (3) adequate accounting records have been kept by the company; and
- (4) the financial statements are in agreement with the accounting records.

10 *Summary financial statements*

The directors of a company may prepare for a financial year a financial report, in summary form, derived from financial statements, directors' report and auditor's report for the financial year. It must contain all the information and particulars included in the statement of financial position and statement of comprehensive income.

11 *Reporting exemptions*

Small private companies, eligible private companies, small guarantee companies, groups of small private companies, groups of eligible private companies and groups of small guarantee companies may be exempted from some of the reporting requirements.

A small private company generally means a company which satisfies any two of the following conditions:-

- (1) amount of total annual revenue of no more than HK\$100 million;
- (2) amount of total assets of no more than HK\$100 million; and
- (3) average number of employees of no more than 100.

12 *Auditors' powers and responsibilities*

Auditors may require information and explanation for the performance of their duties from a wider range of persons, including persons holding or accountable for any accounting records of the company or a Hong Kong incorporated subsidiary of the company.

Auditors may also require the company to obtain information and explanation for the performance of their duties from persons holding or accountable for the

accounting records of a non-Hong Kong incorporated subsidiary.

If an auditor of the company resigns and there are circumstances connected with the resignation that should be brought to members' attention, the resigning auditor has the right to requisition a meeting of the company and make representation.

It is an offence for an auditor who knowingly or recklessly causes any of the specified statements to be contained in or omitted from an auditor's report. It is also an offence for any person who, in giving information or explanation, knowingly or recklessly makes a statement which is misleading, false or deceptive in a material particular to an auditor.

IV Directors' Duties

13 *Restriction on corporate directorship*

Every private company must have at least one director who is a natural person, save for a private company that is a member of a group of companies of which a listed company is a member.

14 *Directors' duty of care, skill and diligence*

Directors are required to exercise reasonable care, skill and diligence, i.e. the care, skill and diligence that would be exercised by a reasonably diligent person with:-

- (1) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (objective standard); and

- (2) the general knowledge, skill and experience that the director has (subjective standard).

15 *Directors' conflicts of interests*

Shareholders' approval is required in the following cases:

- (1) the company making a loan (or quasi-loan) or credit transaction to any director, body corporate controlled by such a director or entity connected to such a director;
- (2) the company giving a guarantee or provide security in connection with such a loan (or quasi-loan) or credit transaction;
- (3) the company making payment for loss of office to director, former director or entity connected to such a director; and
- (4) the company entering into directors' employment contracts the guaranteed term of which exceeds or may exceed three years.

In the above cases, reference to a director covers a wider category of persons connected with the director, such as family members, person in a cohabitation relationship with the director or former director, associated body corporate, specified categories of trustees and partners.

However, the following transactions or arrangements are exempted from shareholders' approval requirement:-

- (1) small loans not exceeding 5% of the company's net assets or called-up capital;
- (2) funds to meet expenditure incurred or to be incurred by a director on company business;
- (3) funds to meet expenditure incurred or to be incurred by a director on defending proceedings;

- (4) funds to meet expenditure incurred or to be incurred by a director in connection with an investigation or regulatory action;
- (5) home loan;
- (6) leasing or hiring goods or leasing land to director, body corporate controlled by such a director or entity connected to such a director;
- (7) if such transactions are entered into in the ordinary course of business of the company;
- (8) intra-group transactions;
- (9) aggregate payment for loss of office to any director or former director does not exceed HK\$100,000.

16 *Ratification by members*

Shareholders may by resolutions ratify conducts of a director involving negligence, default, breach of duty or breach of trust in relation to the company (if under law such is capable to be ratified).

17 *Disclosure of interests*

Directors are required to disclose the nature and extent of their interests in any transaction, arrangement or contract. For a public company, a director is required to disclose any material interest of entities connected with him.

18 *Application to shadow directors*

The duties of directors, conflicts, disclosures and ratifications stated in this Part IV apply to directors as well as to shadow directors.

V General Meetings

19 *Right to demand poll*

Threshold for members to demand a poll is reduced from 10% to 5% of the total voting rights.

20 *Special resolutions*

The notice period of special resolutions has been shortened to at least 14 days.

21 *Electronic means*

General meetings may be held at 2 or more places by using any technology which enables members to listen, speak and vote.

22 *AGM by written resolutions*

The holding of AGM may be replaced by written resolutions.

23 *Dispense with AGM*

The holding of an AGM may be dispensed with by a written resolution passed by all shareholders. However, the directors are still under an obligation to prepare financial statements and directors' report, and auditors are under an obligation to prepare a report on the financial statements prepared by the directors.

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