

## New Companies Ordinance

In January 2014, the Hong Kong government initiated new regulations to its Companies Ordinance with a view of modernising its legal corporate framework and at the same time enhancing corporate governance. These changes which take effect from 3 March 2014 apply to every company on the Companies Registry.

To facilitate a better understanding of these changes, we are pleased to set forth herein highlights of the major changes which we believe are pertinent for consideration. Readers are advised that professional advice are to be sought before formulating business decisions.

### 1. Abolition of Memorandum of Association (“MA”)

The requirement for a company to have a MA as a constitutional document is abolished. The new Section 67 provides that a person may form a company by, amongst other things, delivering to the Companies Registry (CR) an incorporation document in a specified form together with a copy of the company’s Articles of Association (“AA”). There are no transitional arrangements for the abolition of the MA. The deeming provision under the new Section 98 however provided that provisions of the MA of an existing company will be deemed to be regarded as provisions of the company’s AA.

Table A in the First Schedule to Cap. 32, remain unchanged and shall therefore continue to apply to existing companies who had adopted Table A as their AA.

### 2. Par Value of Shares

The new Ordinance adopt a mandatory system of no par value for all companies with share capital and as such, the relevant concept such as “authorised capital”, “share premium” and “nominal value” will be abolished as they are no longer applicable.

As a result of the migration to *no-par value* under Section 98(4):

- ❖ Any provision which states the amount of share capital with which the company proposes to be registered or is registered; and
- ❖ Any provision that divided the share capital into shares of fixed amount, are considered deleted.

## 2. Par Value of Shares (cont'd)

Under Schedule 11 of the new Ordinance, there are transitional and deeming provisions relating to the change from par value to no-par value for shares. The provisions are intended to provide legislative protection to ensure that contractual rights defined by reference to par value or nominal and related concepts will not be affected by the abolition.

In addition, as a result of the migration to no-par value, any such condition which states the amount of share capital with which the company proposes to be registered or is registered will be regarded as deleted in the AA.

With this, all Hong Kong companies should review their requirements to determine if they need to introduce changes to their company's constitutional documents, contracts entered into by the company, trust deeds involving the company as well as share certificates issued. Companies should also review their existing AA against the mandatory articles specified under the new Ordinance to ensure that they are relevant.

## 3. Restricting Corporate Directorship

Under Section 457(2) of the new Ordinance, it is a requirement that every private company shall have at least one (1) natural person as a director. A grace period of six (6) months after the commencement date of the new Ordinance is provided for existing companies to comply with the new requirements. The failure to comply is an offence and liable to a fine of HKD 100,000 and a further fine of HKD2,000 for each day of continuing offence.

Notification of changes of directors should be filed within 15 days from the date of change.

## 4. Use of Common Seal and Official Seal

Under the new Ordinance, the keeping and use of a common seal is optional. In this provision, a company can execute a document by having the document signed by a director or, in case of a company having two or more directors, by two authorised signatories and such documents will have effect as if it has been executed under the common seal.

## 5. Deregistration & Restoration

The existing 3 conditions that regulate the conditions that a company could be deregistered from the Register of the Companies Registrar are:

- ❖ The company has not commenced business or has ceased business operations;
- ❖ It has no outstanding liabilities; and
- ❖ All members have agreed to the deregistration.

Under the new change, 3 more conditions have been added as follows:

- ❖ The company must not be a party to any legal proceedings;
- ❖ It has no immovable property in Hong Kong; and
- ❖ In the case of a holding company, none of its subsidiary company assets could have any immovable property located in Hong Kong.

A new “administrative restoration” procedure to administratively restore a company without the need for recourse to the Court as required under the existing Ordinance has been introduced.

A local company which is dissolved pursuant to the striking off action by the Registrar may apply to be administratively restored if the following conditions set out under the new Section 761 are met:

- ❖ The company was in operation or carrying on business at the time when its name was struck off;
- ❖ If the company has immovable property in Hong Kong which has become vested in the government as bona vacantia, and the government has no objection to the restoration; and
- ❖ The applicant must bring up to date the company’s records kept by the Registrar and any such other conditions as may be imposed by the Registrar.

## 6. Restricted Disclosure of Residential Addresses and Identification Numbers

Under the new Ordinance, the residence address of a director and the full identification numbers of any person will not be available to the public for inspection. Instead the director will be required to provide correspondence addresses in addition to the usual residential addresses and only the directors’ correspondences will be shown on the Companies Registry.

## 6. Restricted Disclosure of Residential Addresses and Identification Numbers (cont'd)

Insofar as for the identification numbers, it will be partially reflected.

In addition, it is no longer required for company secretary to disclose their residential address. Only correspondence address is required for incorporation and registration purposes.

## 7. Facilitating Simplified Reporting

New provisions have been introduced for small and medium enterprises to prepare simplified financial and directors' reports. A private company that qualifies as a "small private company" and a holding company of a group of companies that qualifies as a "group of small private companies" will qualify for simplified reporting.

A private company and a holding company of a "group of small private companies" is qualified for simplified reporting if it satisfies any two of the following conditions:

- ❖ Total annual revenue does not exceed HKD 100 million;
- ❖ Total assets does not exceed HKD 100 million; and
- ❖ Average number of employees during the financial year does not exceed 100.

## 8. Communications in Electronic Form and Hard Copy Form

Changes are also made to introduce new rules governing communications between natural persons and companies in electronic form. The new Ordinance provide that a document may be sent to a company in electronic form if the company has agreed, generally or specifically, or is regarded as having so agreed under the provisions of the new Ordinance. The agreement may be revoked by giving a notice of revocation and such notice must be given no less than 7 days or such longer period as specified by the company's AA, instrument creating the debenture or any other agreement, where applicable.

As for hard copy documents or information sent or supplied by post to a company by a natural person, such documents or information are deemed to have been received by the company on the second business day after posting.

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