

## **Hong Kong - The New Companies Ordinance (Cap.622)**

The new Companies Ordinance (Chapter 622) (the “new CO”) commence operation on 3 March 2014, which divided into 21 parts, consists of 921 sections and 11 schedules. The provisions relating to winding up and insolvency of companies as well as prospectuses remain in the existing Ordinance which is renamed as Companies (Winding Up and Miscellaneous Provisions) Ordinance. All other provisions will be repealed.

The new CO provides a modernized legal framework for the incorporation and operation of companies in Hong Kong. It aims to achieve four main objectives, namely, to enhance corporate governance, ensure better regulation, facilitate business and modernize the law.

Highlights on Major Changes:

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

In order to modernize the law, the MA will be abolished. Following the abolition, the Company name; Members’ Liabilities; Liabilities or contributions of members; and Capital and initial shareholdings are mandatory articles to be included in the Articles of Association (“AA”).

The MA of an existing company will be deemed as the AA and the capital clause will be regarded as deleted.

### **2. Par Value of Share**

The new CO adopts a no-par for all local companies with a share capital and retires the par value of shares, in line with international trends and to provide companies with greater flexibilities in structuring their share capital. This applies to all shares issued before the commencement of the new CO.

As a consequence, there will not be any concepts for authorized capital and share premium. Any amount in the share premium account and the capital redemption reserve will be merged with the existing share capital.

### **3. Common Seal**

The new CO aims to facilitate business operation by making the use of a common seal optional. This gives flexibility to companies which may still wish to keep the common seal.

### **4. Deregistration**

A private company and a company limited by guarantee may apply for deregistration under section 750 of the new CO. 3 new additional conditions are added to the existing requirements for a company to apply for deregistration. They are:

- the company is not a party to any legal proceedings;
- it has no immovable property in Hong Kong; and
- if the company is a holding company, none of its subsidiaries holds immovable property in Hong Kong.

### **5. Simplified Reporting for Financial Statements**

Small private company or holding company of a group of small private companies qualifies for simplified reporting if any 2 of the 3 conditions are satisfied: i) total revenue not more than HK\$100 million; ii) total assets not more than HK\$100 million; or iii) average number of employees not more than 100.

Private company or holding company of a group of private companies with the approval of members holding at least 75% of the voting rights and satisfying any 2 of the 3 conditions are eligible for simplified reporting:

- i) total revenue not more than HK\$200 million; ii) total assets not more than HK\$200 million; or
- iii) average number of employees not more than 100.

Small guarantee company or holding company of a group of small guarantee companies with total revenue of not more than HK\$25 million are also qualified for simplified reporting.

### **6. Annual General Meeting (“AGM”)**

The new CO allows the holding of AGM at 2 or more places by using technology which enables members in different places to listen, speak and vote.

Under the new law, a private company (which is not a subsidiary of a public company) or a company limited by guarantee needs to hold the AGM within 9 months after the end of the accounting reference period. For public company, AGM needs to be held within 6 months after the end of the accounting reference period.

A company may dispense with the holding of AGM if all members approve or it is a single member or dormant company. Nevertheless, the directors still require to approve the audited financial statements, and directors still need to retire and be re-elected within 6 months or 9 months (where applicable) after each financial year.

### **7. Registration of Charges**

To remove the ambiguities and dispense with redundant items, the new CO clearly states that a charge on an aircraft or any share in an aircraft and a charge on instalments due, but not paid, on the issue price of shares are now registrable. However, a charge on ship owner’s lien on subfreights and a charge on cash deposits are not charges on book debts and hence are not registrable.

Besides, certified copies of charge instrument and evidence of discharge are now required for filing with the CR and available for public inspection. The filing deadline has been shortened from 5 weeks to 1 month.

#### **8. Directors**

To enhance transparency and accountability, all private companies must have at least 1 director who is a natural person. There is a grace period of 6 months for private companies to comply with the new requirement. However, this requirement does not apply to companies with a dormant status approved by the CR.

#### **9. Annual Return ("AR")**

There is no change to file AR of private companies. However, the AR of a public company or a company limited by guarantee is to be filed within 42 days after the company's return date i.e. 6 months (for public companies) or 9 months (for companies limited by guarantee) after the end of the company's accounting reference period.

#### **10. Auditors**

The new CO empowers auditors to require a wider range of persons to provide them with information and explanation as they reasonably require for the performance of their duties. These persons include an officer of the company, a Hong Kong subsidiary of the company, an officer or auditor of such a subsidiary and a person holding or accountable for accounting records of the company or such a subsidiary.

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