



雅基商業服務有限公司

R K CORPORATE SERVICES LIMITED

期刊  
Journal

UHY

UHY 國際會計師及顧問事務所聯會獨立會員

A member of UHY International, a network of independent accounting and consulting firms

January 2014  
二零一四年一月

## New Companies Ordinance Alert

### 1. Introduction

Hong Kong's new Companies Ordinance (Chapter 622) ("new CO") will be effective from 3 March 2014. It allows Hong Kong to leverage the developments of company law in other comparable jurisdictions and further enhance its competitiveness and attractiveness as a major international business and financial centre.

The new CO aims to achieve four main objectives:

- enhance corporate governance;
- ensure better regulations;
- facilitate business and
- modernize the law.

The new CO brings various changes of which we discuss some of the significant issues and changes.

### 2. Replacing the formulation of "officer who is in default" with "responsible person" to strengthen the enforcement regime

New CO defines a "responsible person" as an officer or shadow director who "authorizes or permits, or participates in, the contravention or failure".

The company and every responsible person commit an offence, if the company:

- (a) contravention of provisions of the new CO, or of a requirement, direction, condition or order; or
- (b) failure to comply with a requirement, direction, condition or order.

### 3. Abolishing the Memorandum of Association ("MA")

Under the new CO, Memorandum of Association ("MA") is abolished for all local companies. Articles of Association ("AA") will become the constitutional document of the company. A company incorporated in Hong Kong under Chapter 32, (incorporated before 3 March 2014), the existing provisions of its MA, will be regarded as the company's provisions of the AA.

### 4. Adopting a mandatory system of no-nominal value for all companies with a share capital

The new CO adopts a mandatory system of no nominal value for all local companies (also known as par value). Also the relevant concepts such as share premium and requirement of authorized share capital are abolished. Division 2 of Part 4 of Schedule 11 contains transitional provisions relating to the abolition of nominal value to smooth the transition. All shares issued before the commencement date of the new CO are deemed to have no nominal value and the conversion process is not required.

*(Remark: Please consult the accounting professional in respect of the treatment of the existing share premium account and capital redemption reserve account and other relevant issue of share capital.)*

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## New Companies Ordinance Alert (Cont'd)

### 5. Enhancing corporate governance - Directorship

#### (a) Restricting corporate directorship in private companies

New CO restricts corporate directorship by requiring a private company (other than a private company that is a member of a group of companies of which a listed company is a member) to have at least one director who is a natural person.

#### (b) Clarifying the standard of directors' duty of care, skill and diligence

New CO sets out a mixed objective and subjective test for the standard in carrying out a director's duty to exercise reasonable care, skill and diligence.

New CO preserves the existing civil consequences of breach (or threatened breach) of the duty.

#### (c) Requiring ratification of conduct of directors by disinterested members' approval

New CO provides that any ratification of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company must be approved by resolution of the disinterested members to prevent conflicts of interest and possible abuse of power.

#### (d) Requiring members' approval for directors' employment exceeding 3 years

New CO requires the approval of the members of a company for any contract under which the guaranteed term of employment of a director with the company exceeds or may exceed 3 years.

### 6. Clarifying the rules on indemnification of directors against liabilities to third parties

New CO permits a company to indemnify a director to a third party if the specified conditions are met. Part 10 Section 470 requires the permitted indemnity provision to be disclosed in the directors report. Part 10 Section 471 and 472 requires the permitted indemnity provisions be made available for inspection by any member on request.

### 7. Revising the notice required of general meeting

New CO states that in case of an annual general meeting ("AGM"), a company must be called by notice of at least 21 days; and for any other case, notice must be called at least 14 days and 7 days for a limited company and an unlimited company, respectively.

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### 8. Allowing companies to dispense with AGMs by unanimous shareholders' consent

New CO allows a company to dispense with the requirement for holding of AGMs by passing a written resolution or a resolution at a general meeting by all members. Section 622 requires the company to deliver a copy of the resolution to dispense with holding AGMs with the Registrar of Companies ("Registrar") for registration within 15 days after it is passed. A general meeting can be held at more than one place by using any technology.

New CO also allows a company has a single member not to hold an AGM at all.

(Remarks: The financial statements and reports originally required to be laid before an AGM will still need to be sent to the members under Part 9 Section 430(3).)

### 9. Requiring the filing of annual return by public companies and companies limited by guarantees

Under the New CO, the company is required to deliver to the Registrar for registration an annual return in respect of every financial year of the company instead of in each calendar year within 42 days after the company return date. According to new Section 662 (3) and (4), the return date for the public company is 6 months after the end of the company's accounting reference period, and the return date for the guarantee company is 9 months after the end of the company's accounting reference period.

(Remark: There is no change to the requirement to file annual returns of private companies.)

### 10. Replacing the "headcount test" for approving certain schemes of arrangement

New CO sets out the new requirement that replaces the headcount test. It provides that the number of votes cast against the resolution to approve a scheme of arrangement (either involves a general offer for share buy-back or a takeover offer) is not more than 10% of the votes attached to all disinterested shares.

### 11. Striking off or deregistration of a company

New CO sets out that an application for deregistration must not be made unless, at the time of the application:

- (a) all the members agree to the deregistration;
- (b) the company has not commenced operation or business, or has not been in operation or carried on business during the 3 months immediately before the application;
- (c) the company has no outstanding liabilities;
- (d) the company is not a party to any legal proceedings;
- (e) the company's assets do not consist of any immovable property situate in Hong Kong; and
- (f) if the company is a holding company, none of its subsidiary's assets consist of any immovable property situate in Hong Kong.

(Remarks: Items (d) to (f) are additional conditions imposed for deregistration under new CO.)

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### 12. Redefining the scope of the offence for making false statements

New CO sets out that a person commits an offence if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of the new CO, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular.

### 13. Withholding residential addresses of directors and company secretaries and full identification numbers ("ID number") of individuals from public inspection (please see the remark below)

New CO allows the Registrar to withhold from public inspection the usual residential address of a current or former director or company secretary and the full ID number of any person in specified categories of documents.

New CO provides that the usual residential address of a director and the full ID number of any person in specified categories of documents registered with the Companies Registry ("CR") after commencement of the new CO will not be made available for public inspection. The director's correspondence address and the partial ID number of the person will be shown on the Companies Register for public inspection.

(Remark: Due to concerns raised by the public about the new arrangement with respect to the inspection of directors' personal information on the CR, the relevant provisions will be pending after the commencement of the New CO on 3 March 2014 and subject to further discussion in the Legislative Council.)

### 14. Disclaimer and contact

The above information is for general guidance only. Should you have any question or need further information, please contact our Ms. Joyce Kong at (852) 2239 0023 or email [joycekong@rkcorp.com.hk](mailto:joycekong@rkcorp.com.hk).

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