Hong Kong preparing for the New Companies Ordinance

Introduction

With the aim to further enhance Hong Kong’s status as a major international business and financial centre, the Hong Kong Legislative Council passed the New Companies Ordinance (the NCO) on 12 July 2012. This is a significant milestone for the development of company law in Hong Kong. The last major overhaul of the existing Companies Ordinance (the Old Ordinance) was almost 20 years ago.

The NCO provides the legal framework which enables the business community to form and operate companies in Hong Kong. The changes to be introduced by the NCO are extensive and many of them will affect the interests of those parties who have dealings with companies, such as members and creditors.

On 25 October 2013, the Secretary for Financial Services and the Treasury gazetted The Companies Ordinance (Commencement) Notice 2013 which stipulated 3 March 2014 as the commencement date of the NCO.

The NCO will replace the current companies Ordinance (Cap.32) except the prospectus regime and the winding up and insolvency provisions. The prospective regime will be reviewed separately by the Securities and Futures Commission. The winding up and insolvency provision will be carried out in the second phase of the Companies Ordinance rewrite.

This Alert summarises some of the changes (not an exhaustive list) brought on by the NCO.
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<tr>
<td><strong>Constitution</strong></td>
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**Memorandum of Association**

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**Share capital**

**Abolition of par value of shares**

A company having a share capital is required to have a par value ascribed to their shares. A mandatory system of no-par for all companies with a share capital is introduced. There is no longer a requirement for shares to have a par value or for a company to have authorised capital.

**A court-free process for capital reduction**

A company may reduce its share capital without going to court. Require members' approved by a special resolution and supported by a solvency statement based on a uniform solvency Test.

**Amalgamation**

**Court-free amalgamation of companies within a group**

Amalgamation can only be achieved by a court-sanctioned scheme of arrangement. A court-free regime for amalgamations of wholly-owned companies within the same group. There are two kinds of amalgamations namely the vertical amalgamation (a holding company and its wholly-owned subsidiaries) and horizontal amalgamation (involving wholly-owned subsidiaries of a company).

**Directors and officers**

**Restricting corporate directorship in private companies**

A body corporate is permitted to be the sole director of a private company (which is not a member of a group which includes a listed company). Such a private company must have at least one director who is a natural person.

**Protection of directors' personal data**

The usual residential address and full identification (ID) number of a director are made available for public inspection. Only correspondence address will be shown on the Companies Register. Certain digits in the ID numbers will be masked and only partial ID numbers will be shown on the Companies Register for public inspection.
## Major Initiatives

<table>
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<th>Meetings and company administration</th>
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<td><strong>Dispensation with Annual General Meetings (AGM)</strong></td>
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<td><strong>Written resolutions</strong></td>
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<td><strong>Reducing the threshold to demand a poll</strong></td>
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## Strengthening the auditors’ rights

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<th><strong>Strengthening the rights of auditors</strong></th>
<th>Only restricted rights are granted to auditors to obtain information.</th>
<th>Auditors are empowered to obtain information and explanations they may reasonably require for the performance of their duties from a wider range of persons, including:</th>
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|                                         |                                                                      | • a person holding or accountable for any accounting records of the company  
|                                         |                                                                      | • any officer or former officer of the company at a time to which the information and explanation relates  
|                                         |                                                                      | • those persons in the company’s Hong Kong and non-Hong Kong incorporated subsidiaries.  

Failure to comply with the requirement will be subject to criminal sanctions.

## Financial statements and directors’ report

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<th><strong>Simplified financial reporting and directors’ report (does not apply to entities with public accountability, e.g. listed entities, banks, insurance companies, licensed corporations under SFO, etc)</strong></th>
<th>Private Companies which qualified for simplified reporting under section 141D (with unanimous shareholder agreement) could apply the SME-FRF &amp; SME-FRS rather than the full reporting regime of HKFRS.</th>
<th>In addition to those 'S141D' private entities, the NCO has extended the eligibility for simplified reporting to three additional categories of entities (or groups) if they meet certain criteria regarding the type of entity, the size and in certain cases, the need for shareholder approval:</th>
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|                                                                                                                 |                                                                                                                                                          | • small companies (or groups) limited by guarantee  
|                                                                                                                 |                                                                                                                                                          | • small private companies (or groups)  
|                                                                                                                 |                                                                                                                                                          | • larger ‘eligible’ private companies (or groups)  

Public companies and larger private companies (or groups) and guarantee companies (or groups) (that do not qualify for simplified reporting) are required to prepare a more comprehensive directors’ report which includes an analytical and forward-looking ‘business review’.  

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For more information about how the NCO will impact you and your business, please contact any of the following members from the corporate services team:

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We have a team of experienced professionals to provide practical and effective assistance on corporate secretarial compliance requirements.