

Forum on the New Companies Ordinance –What Directors Need to Know

從董事角度認識《新公司條例》研討會 17/3/2014

Panel Discussion by Professionals

Highlights on

1. Part 2 Registrar of Companies and Companies Register
2. Part 3 Company Formation and Related Matters and Re-registration of company
3. Part 12 Company Administration and Procedure

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ORGANISER 主辦機構



SUPPORTING ORGANISATION 支持機構



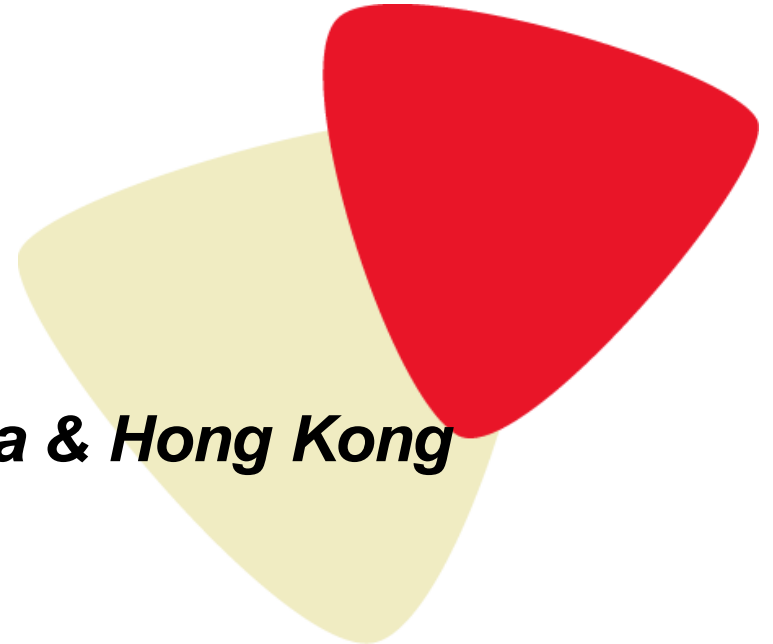
公司註冊處
COMPANIES REGISTRY

New Companies Ordinance (Cap. 622)

Natalia Seng

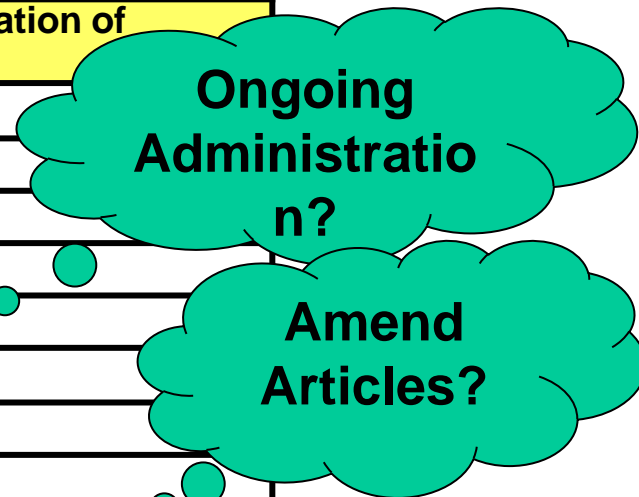
***Chief Executive Officer – China & Hong Kong
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Structure of New Companies Ordinance (Cap.622) (“New CO”)

Part 1	Preliminary
Part 2	Registrar of Companies and Companies Register
Part 3	Company Formation and Related Matters, and Re-registration of Company
Part 4	Share Capital
Part 5	Transactions in relation to Share Capital
Part 6	Distribution of Profits and Assets
Part 7	Debentures
Part 8	Registration of Charges
Part 9	Accounts and Audits
Part 10	Directors and Company Secretaries
Part 11	Fair Dealing by Directors
Part 12	Company Administration and Procedure
Part 13	Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
Part 14	Remedies for Protection of Companies’ or Members’ Interests
Part 15	Dissolution by Striking Off or Deregistration
Part 16	Non-Hong Kong Companies
Part 17	Companies not Formed, but Registrable, under this Ordinance
Part 18	Communications to and by Companies
Part 19	Investigations and Enquiries
Part 20	Miscellaneous
Part 21	Consequential Amendments, and Transitional and Savings Provisions



➤ 5 types of companies

	CO (Cap.32) (8 types of cos)	New CO (Cap.622) (5 types of cos)
Company limited by shares	<ul style="list-style-type: none"> • Private • Non-private 	<ul style="list-style-type: none"> • Private • Public
Unlimited company with a share capital	<ul style="list-style-type: none"> • Private • Non-private 	<ul style="list-style-type: none"> • Private • Public
Company limited by guarantee	<ul style="list-style-type: none"> • Private • Non-private 	<ul style="list-style-type: none"> • Company limited by guarantee <u>without</u> a share capital
Unlimited company without share capital	<ul style="list-style-type: none"> • Private • Non-private 	

➤ Abolition of Memorandum of Association (“MA”)

- Deemed provisions (s.98)
 - Conditions / Clauses in the MA of existing company are deemed to be provisions of the Articles
 - Except for “authorised share capital” which is deemed deleted (*Abolition of nominal / par value*)
 - Company can issue shares as and when necessary
 - ➔ Without limit
(*subject to members’ approval for allotment on non-pro rata basis*)
 - Company may state in the Articles the maximum number of shares that it can issue (s.85)
 - ➔ By special resolution for 1st instance
 - ➔ By ordinary resolution for subsequent alteration of such number of shares

➤ Common Seal

- Adoption and use of common seal → Optional (s.124)
- Common seal if adopted, must
 - Be a metallic seal
 - Have the company's name engraved on it in legible form
- Company having a common seal may have
 - Official seal for use abroad (s.125)
 - Official seal for sealing share certificates etc (i.e. securities seal) (s.126)
 - Para 2(1) in Appendix 3 of Listing Rules:
“That all certificates for capital shall be under seal, which shall only be affixed with the authority of the directors.”

(Note: HKEx FAQ Series 26 – HKEx is considering amending the Listing Rules and in the interim, may seek SFC consent for waiver of general effect from such requirement)

➤ Execution of Documents (s.127)

- Documents can be signed under seal or under hand
- Under common seal
 - In accordance with Articles
- Under hand
 - Single-director company
 - ➔ By sole director
 - Company with 2 or more directors
 - ➔ By 2 directors *or* 1 director and company secretary
 - A document signed in the above manner and expressed (in whatever words) to be executed by the company has effect as if the document had been executed under common seal

➤ Annual General Meeting (AGM) (s.609-s.616)

- **AGM must be held in respect of each financial year**
 - Private company (excluding a subsidiary of public company) and company limited by guarantee
 - ➔ 9 months after financial year end
 - Other cases
 - ➔ 6 months after financial year end
- **AGM is *NOT* required to be held**
 - Dormant company (s.611)
 - Written resolution in lieu of AGM (s.612(1))
 - Single-member company (s.612(2)(a))
 - Dispensation with holding of AGM by unanimous members' resolution (s.612(2)(b) and s.613)
 - ➔ Articles must contain such provisions
 - ➔ Registration of the resolution with Co Reg within 15 days
 - ➔ May be revoked by ordinary resolution (s.614)

➤ Notice of Meeting

- **Notice period (s.571)**
 - **AGM: 21 days**
 - **Other cases: 14 days (limited company)**
7 days (unlimited company)

Notes:

- **Notice period for types of resolutions (special or ordinary) no longer required**
 - **Articles may require longer notice period**
 - **Shorter notice if agreed by: ALL members (AGM)**
95% members (other cases)
 - **To check deemed serve date provisions in:**
 - **Articles**
 - **Part 18 “Communications to and by Companies”**
- **Manner in which notice to be given (s.572)**
 - **In hard copy form**
 - **In electronic form**
 - **Making available on website**

➤ Meeting Venue (s.584)

- May be at 2 or more places using technology that enables members to listen, speak and vote at the meeting

➤ Right to Demand for Poll (s.591)

- A provision in the Articles is void if
 - Excluding the right to demand a poll for resolutions other than election of chairperson of meeting and adjournment of meeting
 - Making ineffective a demand for a poll by
 - At least 5 members
 - At least 5% of the total voting rights
 - The chairperson of the meeting

➤ Voting at Meeting

- **Subject to provisions in the Articles (s.588)**
 - **On a show of hand**
 - **Every member present in person has 1 vote**
 - **Every duly appointed proxy present has 1 vote**
 - **If a member appoint more than 1 proxy, the proxies so appointed cannot vote**
 - **On a poll**
 - **Member / Proxy present has 1 vote for each share held**
- **Proxies**
 - **Company limited by guarantee (s.596(2))**
 - ➔ **If Articles so require, may only appoint another member as proxy**
 - **Company having share capital (s.596(3))**
 - ➔ **May appoint separate proxies**
 - **Proxy form may be sent by electronic means (s.599)**
 - **Articles may give more extensive rights to members and proxies (s.608)**

➤ New procedure for Members' Written Resolutions (s.548-s.561)

	New CO (Cap.622)
Scope (s.548)	<ul style="list-style-type: none">• All matters that require to be passed by members at general meeting may be passed by a written resolution• Except for resolutions regarding<ul style="list-style-type: none">- Removal of auditors- Removal of director
Who can propose (s.549)	<ul style="list-style-type: none">• Directors• Any member (Each member may request the company to circulate with the resolution a statement of not more than 1000 words)
Circulation of proposed resolution by company (s.550-s.552)	<ul style="list-style-type: none">• Company must circulate the written resolution and statement (if applicable)<ul style="list-style-type: none">- proposed by the directors- proposed by member(s) holding not less than 5% of the total voting rights (or a lower % specified in the Articles)

➤ New procedure for Members' Written Resolutions (s.548-s.561)

New CO (Cap.622)

Circulation date (s.547)

- The date on which copies of resolution are sent to eligible members; or
- If sending on different days, the first of those days

Manner and procedures of circulation of written resolution by company (s.553)

- At company's expenses
- Either
 - (a) By sending copies at the same time to all members in hard copy form or in electronic form or by making such copies available on website; or
 - (b) By sending the same copy to each member in turn without undue delay (or different copies to each of a number of members in turn); or
 - (c) By sending copies to some members under (a) above and some members under (b) above
- Not more than 21 days after receipt of the request
- Guidance to members on
 - How to signify agreement to the resolution
 - The date by which the resolution will be lapse if not passed

➤ New procedure for Members' Written Resolutions (s.548-s.561)

	New CO (Cap.622)
Passing of the written resolution (s.556 and s.557)	<ul style="list-style-type: none">• When <u>all</u> eligible members (who on the <u>date of circulation of the resolution</u> are entitled to vote on the resolution) have signified their agreement to the resolution• A member signifies agreement to a written resolution when<ul style="list-style-type: none">- Company receives from such member (or someone acting on behalf of such member) a <u>document</u><ul style="list-style-type: none">✓ identifying the resolution to which it relates; and✓ indicating the member's agreement to the resolution- <u>Such document</u><ul style="list-style-type: none">✓ may be sent to the company in hard copy form or in electronic form; and✓ must be authenticated by the member or someone on behalf of such member• Once agreed, member's agreement cannot be revoked• In case of joint holders, agreement by holder whose name appears first in the register of members

➤ New procedure for Members' Written Resolutions (s.548-s.561)

	New CO (Cap.622)
Period for agreement (s.558)	<ul style="list-style-type: none">• Resolution lapses if not passed before the end of<ul style="list-style-type: none">- The period of 28 days beginning on the circulation date; or- Other period as specified in the Articles
Notification to auditor and members by company (s.555 and s.559)	<ul style="list-style-type: none">• Company must notify the auditor and members in respect of the written resolution<ul style="list-style-type: none">- Before circulating of the written resolution<ul style="list-style-type: none">✓ Send a <u>copy</u> of the resolution and relevant document to the auditor- After passing of the written resolution<ul style="list-style-type: none">✓ Send a <u>notice of the fact</u> to every member and the auditor within 15 days

- **Ongoing administration → Understand and Prioritize**
 - **Mandatory vs Optional**
 - **Immediate effective vs Transitional arrangement**
 - **Own company's needs and circumstances**

- **Approach on amending the Articles**
 - **Do nothing**
 - **Deeming provisions in New CO**
 - **Inconsistent with New CO**
 - **Unable to take advantage of certain new provisions**
 - **Adopt Model Articles issued by Co Reg**
 - **No mandatory articles**
 - **References to New CO**
 - **Amend existing Articles**
 - **Remove discrepancies**
 - **Take advantage and ensure flexibility of certain provisions**

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Thank you