

The Government Consults on Subsidiary Legislation for Implementation of the new Companies Ordinance – Phase One

Quick Read

As explained in our previous Legal Update “[*New Companies Ordinance Expected to Take Effect in 2014*](#)”, the new Companies Ordinance (CO) was gazetted on 10 August 2012 and is expected to take effect in 2014. For the purpose of facilitating the implementation of the new CO, 12 pieces of subsidiary legislation are required to be legislated to provide for administrative, technical and procedural matters.

The Government intends to conduct consultation on the 12 pieces of subsidiary legislation in two phases. The first phase commenced on 28 September 2012 where the Financial Services and the Treasury Bureau and the Companies Registry published the “*Subsidiary Legislation for Implementation of the new Companies Ordinance – Phase One Consultation Document*” (Consultation Paper) to consult the public on the following seven pieces of subsidiary legislation:

- Companies (Summary Financial Reports) Regulation
- Companies (Directors’ Report) Regulation
- Companies (Specification of Names) Order
- Companies (Non-Hong Kong Companies) Regulation
- Company Records (Inspection and Provision of Copies) Regulation
- Companies (Model Articles) Notice
- Companies (Accounting Standards (Prescribed Body)) Regulation

Comments in response to the Consultation Paper should be submitted on or before 9 November 2012.

Subsidiary Legislation

Please see below a summary of the seven pieces of subsidiary legislation under the first phase consultation:

SUBSIDIARY LEGISLATION	REQUIREMENTS UNDER THE EXISTING CO/ EXISTING REQUIREMENTS	REQUIREMENTS UNDER THE NEW CO	MAJOR PROVISIONS IN THE SUBSIDIARY LEGISLATION
<i>Companies (Summary Financial Reports) Regulation</i>	<ul style="list-style-type: none"> A listed company may prepare its financial report in summary form and send to its members in lieu of the relevant financial documents (referring to the company's accounts, directors' report and auditor's report) from which the report is derived. The company is required to send a notification (Notification) to confirm the intention of individual members. If a member agrees to receive summary financial reports, he may give a notice of intent to the company. 	<ul style="list-style-type: none"> Apart from listed companies, companies not preparing simplified reports may also prepare summary financial reports. A member will receive hard copy summary financial reports by default if he has not submitted a notice of intent. A member may give a notice of revocation or a notice of cessation of statutory election to indicate his new preference. Reporting documents or summary financial reports can be received in electronic form. A member receiving summary financial reports may request copies of the reporting documents for the relevant financial year. 	<ul style="list-style-type: none"> Setting out the forms and contents of summary financial reports and the Notification. Specifying particulars to be included in and the effect of various notices (i.e., notice of intent, notice of revocation and notice of cessation of statutory election).

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<i>Companies (Directors' Report) Regulation</i>	<p>A directors' report should be attached to the company's balance sheet.</p> <p>Matters which should be included in a directors' report:</p> <ul style="list-style-type: none"> • principal activities of the company; • shares issued; • management contracts; • arrangements involving director's interest or benefits; • donations; and • other material matters relevant for appreciation of the state of the company's affairs. 	<p>Restating the requirements for preparation of a directors' report which include:</p> <ul style="list-style-type: none"> • principal activities of the company • management contracts; • permitted indemnity provisions for the benefit of directors (new requirement); • business review (new requirement); and • other matters prescribed in subsidiary legislation. 	<p>Prescribing the information to be contained in a directors' report:</p> <ul style="list-style-type: none"> • directors' interests under arrangements entered into by the company or another group company; • donations made by the company and its subsidiary undertakings; • shares issued by the company; • equity-linked agreements entered into by the company (new requirement); • dividends recommended; • reasons for the resignation of a director (new requirement); and • directors' permitted indemnity provision (new requirement).
<i>Companies (Specification of Names) Order</i>	<ul style="list-style-type: none"> • Prior approval is required if a company intends to register a name containing certain specified words or expressions. • At present, there are 24 specified words and expressions which require prior approval. 	<p>Reproducing the requirement for prior approval for company names containing certain words or expressions.</p>	<p>Modifying the existing list of specified words and expressions as follows:</p> <ul style="list-style-type: none"> • excluding 10 of the current specified words and expressions: "Cooperative" and "合作"; "Building Society" and "建屋合作社"; "Mass Transit", "Underground Railway", "地下鐵路" and "地鐵"; and "Municipal" and "市政"; and • adding four new words and expressions: "tourism board" and "旅遊發展局" and "levy" and "徵費". <p>Accordingly, there will be a total of 18 specified words and expressions requiring prior approval.</p>

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<i>Companies (Non-Hong Kong Companies) Regulation</i>	<p>Requiring a non-Hong Kong company to:</p> <ul style="list-style-type: none"> • apply for registration; • deliver constitutional instrument; • deliver annual returns and latest accounts if required; • provide certified translation of supporting documents where necessary; • deliver returns for change of key particulars (Amendment Returns); and • file a notice upon termination of the authorization of an authorized representative (Termination Notice). <p>Allowing a non-Hong Kong company to:</p> <ul style="list-style-type: none"> • apply to register its corporate names in both English and Chinese; and • revise its published accounts under specified circumstances. 	Similar requirements as the existing CO.	<p>Stating detailed requirements and matters in relation to non-Hong Kong companies as follows:</p> <ul style="list-style-type: none"> • particulars and documents required for an application for registration; • certain applications or returns may be accompanied by a certified translation of the relevant part of a certificate of incorporation, etc. showing the additional domestic names; • documents required to accompany a Termination Notice; • particulars and documents required to accompany an annual return; • delivery of revised accounts; and • particulars and documents required in relation to an Amendment Return.

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<i>Company Records (Inspection and Provision of Copies) Regulation</i>	<p>In general, a company is required to:</p> <ul style="list-style-type: none"> • keep certain records at its registered office or a place where the records are made up; • make available the records for inspection upon request; and • provide copies of the records upon request (fees may be charged). <p>The following requirements are explained individually for each type of record:</p> <ul style="list-style-type: none"> • the time allowed for inspection; • the number of days within which a copy of the requested record should be delivered; and • the maximum fees payable. 	<ul style="list-style-type: none"> • Retaining the provisions regarding the rights to inspect and obtain copies of records in the principal ordinance. • The existing CO only contains basic inspection rights without detailed procedures. Under the new CO, detailed provisions concerning the arrangement for inspection and provision of copies and related matters will be provided for in the subsidiary legislation. 	<p>Providing a detailed and comprehensive regime for keeping and inspection of company records:</p> <ul style="list-style-type: none"> • prescribing that any place in Hong Kong is allowed for a company to keep its company records; • providing details for inspection of company records including the contents of a notice of inspection to be given by a requestor and the length of the notice period required for making an inspection; • imposing obligations on a company to notify the requestor of the place for inspection; make the company records available for inspection; inform the requestor of the most recent date on any changes made to the company records and allow the making of copies; • specifying the period within which a company must provide copies; • explaining the right of a company to withhold certain information; and • specifying the fees payable.

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<i>Companies (Model Articles) Notice</i>	<p>Every company should have its articles of association (AA). Standard AA are set out in Schedule 1 for companies which do not have their own AA expressly excluding or modifying the standard AA:</p> <ul style="list-style-type: none"> • Table A provides the standard AA for companies limited by shares; • Tables C and D provide the standard AA for companies limited by guarantee without a share capital and with a share capital respectively; and • Table E provides the standard AA for unlimited companies having a capital. 	<ul style="list-style-type: none"> • Companies are still required to have AA although the requirement for memorandum of association is abolished. • Prescribing model AA (MA) which a company may adopt any or all of the provisions as its AA. If a limited company does not exclude or modify the relevant MA on its incorporation, the MA will form part of the company's AA to the extent possible. 	<p>Prescribing MA for the following three types of companies:</p> <ul style="list-style-type: none"> • public companies limited by shares; • private companies limited by shares; and • companies limited by guarantee. <p>MA have been significantly reorganised for clarity, coherence and ease of reference. The following broad topics will be covered:</p> <ul style="list-style-type: none"> • directors and company secretary (including the decision-making process of directors); • members' rights and the proceedings of general meetings; • shares and distributions; and • miscellaneous matters, including communications to and by the company.

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<i>Companies (Accounting Standards (Prescribed Body)) Regulation</i>	<p>The accounts of a company must:</p> <ul style="list-style-type: none"> • satisfy the requirements contained in Schedule 10 to the existing CO which stipulates a detailed list of items to be disclosed; and • comply with the reporting standards issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) – the Hong Kong Financial Reporting Standards, the Hong Kong Financial Reporting Standard for Private Entities or the Small and Medium-sized Entity Financial Reporting Standard. 	<ul style="list-style-type: none"> • Streamlining the disclosure requirements for financial statements and repealing Schedule 10. • Giving indirect statutory recognition to the reporting standards issued by HKICPA by stating that the financial statements of a company must comply with the applicable statements of standard accounting practices issued or specified by a body prescribed by subsidiary legislation. • Requiring a company to specify in its financial statements whether the financial statements have been prepared in accordance with the applicable accounting standards and to explain any material departure from those standards. 	Prescribing HKICPA as the body for the issuance or specification of accounting standards.

Way Forward

The Government intends to launch the second phase of consultation covering the remaining five pieces of subsidiary legislation later this year:

- Companies (Trading Disclosures) Regulation
- Companies (Revision of Financial Statements and Reports) Regulation
- Companies (Disclosure of Information about Benefits of Directors) Regulation
- Companies (Residential Addresses and Identification Numbers) Regulation
- Companies (Unfair Prejudice Proceedings) Rules

The Government aims to complete the entire legislative process by July 2013. Upon completion of the necessary procedures, the new CO together with the subsidiary legislation will be brought into operation, tentatively in 2014.

We will closely monitor the latest developments of the new CO and its subsidiary legislation from time to time and will issue updates as and when appropriate. In the meantime, please do not hesitate to contact us if you require any advice or further information.

You may download copies of the Consultation Paper via the link below:

<http://www.cr.gov.hk/en/publications/consultation20120928.htm>

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