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The New Hong Kong Companies Ordinance Chapter 622 of the Laws of Hong Kong

Important Notice

February 24, 2014

The new Hong Kong Companies Ordinance (the "new Companies Ordinance"), Chapter 622 of the Laws of Hong Kong, has been passed by the Legislative Council and will commence operation and be implemented on March 3, 2014.

There are four major objectives for the implementation of the new Companies Ordinance:

- Enhancing Corporate Governance
- Ensuring Better Regulation
- Facilitating Business
- Modernising the Law

All the core provisions affecting the operation of companies in the existing Companies Ordinance ("Cap. 32") will be repealed by the provisions of the new Companies Ordinance except those provisions relating to prospectuses, winding-up, insolvency of companies and disqualification of directors, receivers and managers.

Highlights of major changes in the new Companies Ordinance are as follows:-

1) Types of Companies

Under the new Companies Ordinance there are five company types:

a. Private company limited by shares
b. Public company limited by shares
c. Company limited by guarantee (without a share capital)
d. Private unlimited company with a share capital
e. Public unlimited company with a share capital

2) Abolition of Memorandum

a. Memorandum of Association is abolished for all local companies.
b. Articles of Association is the constitutional document of a company.
c. For companies registered under Cap. 32 ("existing companies"), current provisions in their Memorandum of Association will be regarded as provisions of their Articles of Association.
d. Table A in the First Schedule to Cap. 32, in so far as not modified by the provisions of the new Companies Ordinance, will continue to apply to existing companies which adopt Table A as their Articles of Association.

3) Common Seal

The keeping and use of a common seal becomes optional.

4) Mandatory Regime of No-par

a. A company's shares will have no nominal value.
b. The new regime applies to all local companies with a share capital.
c. The new Companies Ordinance contains transitional and deeming provisions relating to the move from par value shares to no-par value shares to facilitate a smooth transition.
d. All shares issued before the commencement date of the new Companies Ordinance are deemed to have no par value. Conversion process is not required.
e. Amounts standing to the credit of a company's share premium account and capital redemption reserve account become part of the company's share capital.
f. Individual companies may review their particular situations to determine if specific changes to their constitutional documents, contracts entered into by the companies etc. are required, having regard to their particular circumstances.

5) Restricting Corporate Directorship

a. Every private company must have at least one director who is a natural person.
b. A grace period of 6 months after the commencement date of the new Companies Ordinance is provided for existing companies to comply with the new requirement.

6) Long Term Service Contract

Members' approval is required for any director's employment contract that exceeds 3 years.

7) Annual Returns

For a private company, there is no change in filing requirements. An annual return should be filed within 42 days after the return date, i.e. the anniversary date of the company's incorporation. Late submission of annual returns is subject to a higher registration fee.

8) Accounts and Reports

a. Small and medium enterprises (SMEs) may prepare simplified financial statements and directors' reports.
b. A private company is qualified for simplified reporting if it satisfies any two of the following conditions:
    (i) Total annual revenue does not exceed HK$100 million;
    (ii) Total assets do not exceed HK$100 million; and
    (iii) Average number of employees during the financial year does not exceed 100